



## TENNESSEE HIGHER EDUCATION COMMISSION

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REGULAR CALENDAR ITEM: V.

**MEETING DATE:** July 28, 2022  
**SUBJECT:** Division of Postsecondary State Authorization  
Rulemaking Hearing Rules  
**ITEM TYPE:** Action  
**ACTION RECOMMENDATION:** Approval

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### BACKGROUND

The Tennessee General Assembly amended the Tennessee Higher Education Authorization Act of 2016 (THEAA) earlier this year through the passage of 2022 Pub. Ch. No. 1044. Governor Lee signed 2022 Pub. Ch. No. 1044 on May 11, 2022. Thereafter, the Commission adopted Emergency Rules to implement the THEAA, as amended. The Emergency Rules were effective July 1, 2022.

In the interim and in anticipation of the expiration of Emergency Rules on December 28, 2022, THEC filed a Notice of Rulemaking Hearing with the Secretary of State. Per the notice, the rulemaking hearing would be held July 14, 2022, with a written comment deadline of July 11, 2022. Written comments were received from three (3) institutions and four (4) institutions attended the rulemaking hearing. During the hearing two (2) institutions asked questions about the proposed rules, but did not offer particular comments or suggest revisions after hearing the responses of Commission staff.

To ensure notice of the effective and proposed statutory and regulatory revisions, the THEC website was updated to explain the changes and provide additional notice of the rulemaking hearing. See [Legislation and Rules \(tn.gov\)](#). Additionally, on June 17, 2022, THEC notified institutions of the rulemaking hearing and website updates via email. Institutions received an invitation to attend an informational session on the emergency and proposed Rulemaking Hearing Rules, which included an opportunity for attendees to ask questions. Lastly, the slides used during the informational session and a recording of the session were emailed to all attendees and those who requested such and posted on THEC's website.

### RULEMAKING HEARING

After hearing comments and further review of the proposed rules, Commission Staff propose four (4) substantive changes to the text of the proposed Rulemaking Hearing Rules published in the Notice of Rulemaking Hearing. These revisions are included in the Rulemaking Hearing Rules text following the Action Recommendation.

1. 1540-01-02-.02(2)(f) – Commission Staff recommends changing “authorization subject to review and ratification by the Commission at its next regularly scheduled meeting” to “authorization subject to review and ratification by the Commission at a regularly scheduled meeting.” The reason for this recommendation is to allow an institution to receive provisional authorization as soon as possible without consideration of whether granting provisional authorization will allow time for the institution to appear on the agenda for the next regularly scheduled meeting.

2. 1540-01-02-.19(8) – Commission Staff recommends adding the phrase “on behalf of whom a complaint is filed” as follows:

Any student who files a complaint or on behalf of whom a complaint is filed must first exhaust the grievance process at the institution. Parties to the complaint shall be the complainant and any named institution or agent thereof.

This addition implements the statutory revision requiring a student to exhaust the institution grievance process in an instance where the student does not file the complaint. An example of this is when a parent files a complaint on behalf of the student.

3. 1540-01-02-.8(2) - Two institutions, Nashville Software School, Inc. and Bill Rice Bible College filed comments on this rule revision. One comment addresses the addition of “other fees” to the prohibition of collections more than then (10) business days prior to the scheduled start date. The institution noted that this would impact their operation and require them to obtain a bond. The second comment pertains to the methodology proposed in the rule for calculating the amount of the bond. THEC appreciates these thoughtful comments and opines that this issue requires further study. Therefore, the best approach is to remove the proposed revision and raise this issue for discussion in the near future with a broader group of institutions and, if necessary, propose a rule revision in the future. Both commenters agree with the recommended approach of Commission Staff.
4. 1540-01-02-.17 – Stonepile LLC filed a comment noting that the revision deletes former (3)(b) thereby removing the option for an institution to use a refund policy that is more favorable to a student than the THEC default policy. THEC agrees with this comment. However, THEC notes that the intent of the revision was in part to ensure that Commission Staff could make a proper determination as to whether the policy of an institution was in fact more favorable in all instances. Such a determination has proven to be a difficult, time-consuming task. Thus, in order to both allow students to benefit from a more favorable policy and enable Commission Staff to better conduct a review of a proposed policy, THEC recommends that an institution be able to use a refund policy that mirrors the stated policy in the rule except the institution may elect to increase the pro rata percentage. By increasing the pro rata percentage, students benefit, and by limiting the variable to only the percentage, Commission Staff have only one factor to consider. The commenter agrees with the recommended approach of Commission Staff.

## **PROPOSED RULEMAKING HEARING RULES**

Highlights of the Rulemaking Hearing Rules before you today are as follows:

- Removing references to the Committee on Postsecondary Educational Institutions and revising the roles of the Commission, Executive Director, and Commission Staff accordingly.
- Adding and revising definitions.
- Allowing for submission of certain applications on a rolling basis.
- Providing notice as to the Commission’s application review process.
- Allowing for authorization for up to four (4) years with the requirement that the institution submit a Certification of Compliance in years one (1), two (2), and three (3), as applicable.
- Creating minimum requirements for new forms, such as the Certification of Compliance, and revising forms affected by 2022 Pub. Ch. No. 1044, such as the Program Registration Request.

- Deleting references to agent permits and agent bonds, including the fees associated with applications for permits.
- Stating that student level statistical data is due by October 15 each year.
- Providing that a student who asserts a complaint against regularly authorized institutions must first exhaust the grievance process at the institution and detailing the complaint review process for all complaints.
- Deleting the degree-granting limitation to eligibility for Optional Expedited Authorization (OEA).
- Allowing institutions that have had OEA revoked to reapply when the grounds for revocation have been resolved.
- Providing guidance related to requirements for cleaning or similar tasks as part of a program of instruction.
- Revising contents of the pre-enrollment checklist and enrollment agreement.
- Allowing for an institution to submit annual financial statements for the fiscal year that ended prior to one hundred-twenty (120) calendar days of the application or certification due date.
- Changing the cancellation and refund policy.
- Clarifying the distinction between a refund and unearned tuition owed by a closing institution.
- Amending the refund of regulatory fees language.
- Specifying when a transcript is required versus a certificate and the required contents of both credentials.
- Elaborating on the safeguards that may be required along with an awarded of provisional authorization status.

## **ACTION RECOMMENDATION**

The Secretary of State's Rulemaking Hearing Rule(s) Filing Form (SS-7039) (October 2021) requires that a roll call vote of the Commission be taken. Additionally, the form requires that the Attorney General and Reporter of the State of Tennessee examine and approve the rules prior to filing the form.

Based on the foregoing, Commission staff recommends that the Commission vote to adopt the proposed Rulemaking Hearing Rules as written herein following this section and direct Commission Staff to complete SS-7039, submit the signed form to the Office of the Attorney General and thereafter the Secretary of State, and authorize the Executive Director to make any revisions to the rules proposed by the Office of the Attorney General that are technical or necessary to ensure the legality of the rules.

# PROPOSED RULEMAKING RULES – VERSION WITH AMENDMENTS INCORPORATED

## Amendment

### CHAPTER 1540-01-02

### AUTHORIZATION AND REGULATION OF POSTSECONDARY EDUCATION 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 Higher Education Authorization Act of 2016, as amended, at Title 49, Chapter 7, Part 20 (the Act). Institutions and agents must comply with the current language of the Act and these rules.

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

1540-01-02-.02 Role of the Commission, Executive Director, and Commission Staff.

- (1) Role of the Tennessee Higher Education Commission (THEC or Commission):
  - (a) The Commission at each quarterly meeting shall consider recommendations from the Executive Director and Commission staff regarding authorizations and any other matter at the request of the Commission's Executive Director.
- (2) Role of the Tennessee Higher Education Commission Executive Director:
  - (a) The Executive Director is empowered to take any urgent action in furtherance of the Act during the periods between Commission meetings, provided that:
    1. the Executive Director gives written notice of such action to the affected party;
    2. the Executive Director notifies the affected party that they may notify the Commission within ten (10) business days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final; and
    3. at the same time the Executive Director gives written notice of the action to members of the Commission.
  - (b) The Executive Director is empowered to review decisions and recommendations of Commission staff as provided for in these rules.
  - (c) On the advice of Commission staff, the Executive Director, in consultation with the Commission Chair, is authorized to waive these rules upon well documented extraordinary cause, where necessary to protect the public interest, and when consistent with the Act. A waiver shall not be effective for more than one (1) year from its effective date.
  - (d) The Executive Director may exempt an institution, program, or activity from authorization or from compliance with a specific rule if such an exemption can be demonstrated to be in the public interest. Such exemptions should be temporary and narrow in scope.
  - (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. § 49-7-2012:

1. assess fines under the Act and these rules; and
  2. intervene to alter, place conditions on, or revoke, in full or in part, an institution's authorization or program registrations.
- (f) The Executive Director is empowered to grant provisional initial authorization to an institution seeking initial regular or optional expedited authorization subject to review and ratification by the Commission at a regularly scheduled meeting.
- (g) The Executive Director is empowered to extend authorization time periods of institutions authorized as of July 1, 2022, in order to effectuate the purposes of the Act and these rules. At the Executive Director's direction, Commission staff shall post on the Commission's website notice of authorization extensions and future filing requirements and provide notification of the posting to institutions via email.
- (3) Role of the Commission staff:
- (a) The office and Commission staff responsible for oversight of the Act and Rule Chapters 1540-01-02 and 1540-01-10 shall be officially referred to as the Tennessee Higher Education Commission, Division of Postsecondary State Authorization (DPSA).
  - (b) Commission staff and, as needed, other industry representatives or subject matter experts appointed by the Executive Director, shall perform authorization site visits and/or audits to review, inspect, and investigate locations as necessary to ensure compliance with the Act and these rules. Authorization site visits or audits may be conducted at the discretion of Commission staff for reasons including, but not limited to, authorization determinations, program registrations, complaints, investigations, compliance checks, or any situation that may adversely affect students or people at the institution.
  - (c) Commission staff shall investigate as necessary any activity believed to create a physical presence in Tennessee to verify adherence to the Act and these rules or to determine whether an exemption is appropriate.
  - (d) Commission staff shall establish due dates, as necessary, for submission of all fees, applications, registrations, certifications, or other materials.
  - (e) Commission staff may share with state or federal agencies information on institutions seeking, holding, or required to be authorized by the Commission as well as any unauthorized educational operations. Commission staff may share with appropriate accrediting bodies any adverse action recommended or taken by Commission staff, the Executive Director, or Commission.
  - (f) Commission staff may recommend that the Executive Director take adverse action as described in of the Act or these rules.

Authority: T.C.A. §§ 49-7-2004, 49-7-2014, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.03 Definitions.

- (1) "Ability-to-benefit" or "ATB" as an adjective describes:
  - (a) a student who has not provided proof of receiving a high school diploma or equivalency, but who has demonstrated by successfully passing an ability-to-benefit test that the student possesses the cognitive skills needed to benefit from a course or certificate or diploma program; or
  - (b) a test given by an authorized institution to determine whether a student possesses the cognitive skills to benefit from a certificate or diploma program.
- (2) "Academic" as an adjective describing a degree means a degree that is organized primarily for academic or professional 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 Divinity, 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 postsecondary educational institutions and programs by private educational associations that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. The date of accreditation is the date applicable to a location and includes approval, recognition, or similar designation of a branch, satellite, instructional or other location descriptor used by an accreditor. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.
- (4) "Activities and operations" mean to operate, to grant, to offer, and the prohibited actions described in 49-7-2007.
- (5) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.
- (6) "Adverse action" means action taken by the Executive Director or Commission to fine, limit, change, suspend, or cause to cease activity that is not compliant with the Act and these rules. Such adverse action includes fines of five hundred dollars (\$500) per violation per day, suspension of activity, conditional authorization or program registration, or revocation of authorization or program registration.
- (7) "Agent" means any person representing a postsecondary educational institution for payment, who solicits in any form and enrolls, or seeks to enroll, a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution. Persons owning an interest in an institution and the institution's full-time employees and directors shall not be considered agents under

the Act.

- (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 (1) institution will meet the admission education requirement for a program leading to a higher credential at a second institution.
- (9) "Associate degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours, ninety (90) quarter credit hours, or the equivalent.
- (10) "Authorization" means approval of a postsecondary educational institution by the Commission for the institution to engage in activities or operations otherwise prohibited by T.C.A. § 49-7-2007. Authorization is for a specified time at a specified location. Institutions shall not use authorization to connote greater approval than simple permission to engage in allowed activities or operations. Terms which may not be used include, but are not limited to, "accredited by," "supervised by," "endorsed by," and "recommended."
- (11) "Authorization site visit" means visit to a location by Commission staff or other industry representatives or subject matter experts to verify, review, inspect, or investigate as necessary to ensure a location or program is compliant with the Act and these rules.
- (12) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least one hundred and twenty (120) semester credit hours, one hundred and eighty (180) quarter hours, or the equivalent.
- (13) "Certificate program" generally means one (1) or more technical courses usually completed in one (1) to twenty-six (26) weeks, or up to and including five hundred (500) contact hours normally with a single skill objective. A program name or certificate credential should not include terms such as "certified," "registered," or "licensed" unless the postsecondary educational institution is recognized by a subject matter expert state or federal agency, board, or commission to award such a credential or recognized by a private company where the curriculum or product of the company is being taught, for example, Microsoft certifications.
- (14) "Clock Hour" has the same meaning as contact hour.
- (15) "Closed enrollment" means instruction provided to a group or business by a postsecondary educational institution, whereby public solicitation does not occur and the institution is given a list of enrollees to train at no cost to the students.
- (16) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary educational institution offering courses of study leading to a degree.



- (17) "Commission" means the Tennessee Higher Education Commission.
- (18) "Completion rate" shall have the same meaning as "graduation rate," and shall mean the number of completions as a percentage of the number of students not currently enrolled minus the number of withdrawals due to special circumstances, that is,  $\text{Completion Rate} = \frac{\text{Number of Completions}}{\text{Number Not Currently Enrolled} - \text{Special Circumstance Withdrawals}} \times 100$ .
- (19) "Contact hour" means a sixty (60) minute period of time that contains at least fifty (50) minutes of actual directed or supervised instructional time.
- (20) "Degree" means an educational credential from a postsecondary educational institution with the term associate, bachelor's, master's, specialist, or doctor in the credential designation.
- (21) "Diploma program" means a program of instruction offering technical and some basic course work. General education courses may be included. Program requirements generally range from more than five hundred (500) contact hours to less than the requirements for an Associate degree.
- (22) "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.
- (23) "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.
- (24) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least ninety (90) semester hours of graduate credit, one hundred and thirty-five (135) quarter hours of graduate credit, or the equivalent.
- (25) "Enrollment" or "Enrolled" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.
- (26) "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.
- (27) "Educational service" means any class, course or program of training, instruction or study.
- (28) "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.
- (29) "Field Trip" means a congregation of students and instructors at a location in Tennessee for

- instruction in the subject of enrollment for not more than three (3) calendar days. Such field trips may not occur more than three (3) times a year in the same program.
- (30) "General education courses" means a category of academic subjects that students are required to take prior to graduation outside of their major area of study or vocational concentration. These subjects are intended to broaden students' intellectual growth and cover topics including humanities, communication/language skills, social science, science, and quantitative and ethical reasoning.
  - (31) "Independent certified public accountant" means a certified public accountant not associated with the institution, its owners, or its affiliated businesses.
  - (32) "In-field placement rate" means the Number Placed In-Field as a percentage of number placeable, that is,  $\text{In-Field Placement Rate} = \frac{\text{Number Placed In-Field}}{\text{Number Placeable}} \times 100$ .
  - (33) "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
  - (34) "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.
  - (35) "Location" means an address that may be used for purposes of a postsecondary educational institution in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons at the address. When physical presence activities or operations are not the result of instruction at a postsecondary educational institution location as determined by the Commission staff, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location.
  - (36) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, or the equivalent.
  - (37) "Other fees" means fees, other than tuition, paid to the institution for housing, meals, or transportation or fees 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, or graduation fees. Other fees may include, at the institution's discretion, optional fees, including post-program completion testing fees, if collected by the institution on behalf of a student.
  - (38) "Out-of-state institution" means an authorized postsecondary educational institution that maintains its primary campus in another state, but has a physical presence in Tennessee.

- (39) "Ownership" and "Owner" mean:
- (a) the individual, if the postsecondary educational institution is a sole proprietorship;
  - (b) all partners, whether full, silent, or limited, if the postsecondary educational institution is a partnership;
  - (c) all individuals and entities with an interest in the for-profit corporation or other for-profit legal entity, if the postsecondary educational institution is a for-profit corporation or other for-profit legal entity; or
  - (d) the executive committee of the governing board, if the postsecondary educational institution is a not-for-profit or nonprofit entity.
- (40) "Physical presence" means presence within the state of Tennessee for the purpose of conducting activity related to a postsecondary educational institution as given in T.C.A. § 49-7-2007. Physical presence as further outlined for purposes of authorization shall include but not be limited to:
- (a) operating a location within the state;
  - (b) offering instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors or computer resources, computer linking, or any form of electronic means;
  - (c) granting an educational credential from a location within the state;
  - (d) using an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; or
  - (e) advertising, disseminating promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to be authorized by the Commission.
- Physical presence does not include field trips, sanctioned sports recruiting activities, or college fairs or other assemblies of institutions in Tennessee. As to college fairs or assemblies and institution may not enroll an individual, allow an individual to sign any agreement obligating the person to the institution, accept any moneys from the individual, or follow-up with an individual by means of an in-person meeting in Tennessee.
- (41) "Placement rate" means the number placed as a percentage of the number placeable, that is,  $\text{Placement Rate} = \text{Number Placed} / \text{Number Placeable} \times 100$ .
- (42) "Postsecondary educational institution" includes, but is not limited to, a school, college, university, or other type of entity offering educational credentials, instruction, educational services, or other activities as described in T.C.A. § 49-7-2007, primarily to persons who have

completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for the attainment of educational, professional, or vocational objectives. The terms "campus," "location," "postsecondary educational institution," and "institution" may be used interchangeably such that determinations made pursuant to the Act and these rules are made in regard to the specific location.

- (43) "Primarily located" means:
- (a) if accredited, the state recognized by the accreditor as the state in which the main campus or similarly designated campus is located;
  - (b) If unaccredited, the state where the main administrative or corporate office is located.
- (44) "Principal party" means an owner, executive board member, or institutional director.
- (45) "Prospective student" means a student who has been accepted for attendance at an institution but who is not enrolled as defined in subparagraph (25) of this rule.
- (46) "Quarter" is a period of instruction into which the academic year is divided. A quarter must consist of at least ten (10) weeks.
- (47) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction for one (1) quarter of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week, or the equivalent number of hours.
- (48) "Refundable fees" means any fees charged by an institution to the student for a period of enrollment but excluding fees paid for (1) tangible goods retained by the student or (2) services provided in full to the student.
- (49) "Residential course" means a course in which the student comes to an authorized location as opposed to a course where the student and the instructor are in different locations.
- (50) "Semester" is a period of instruction into which the academic year is divided. A semester must consist of at least fifteen (15) weeks.
- (51) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction during one (1) semester of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (52) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents.
- (53) "Specialist Degree" means an advanced master's degree or post-master's degree with requirements less than those required for a doctoral degree.

- (54) "Supervised field experiences" means a student learning experience comprised primarily of the practical application of previously studied theories and skills, under the oversight of a supervisor, mentor, faculty member or other qualified professional who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. The supervised field experience is part of a program of study offered by the enrolling institution. Examples include, but are not limited to, practica, student teaching, clinical placements, or internships.
- (55) "These rules" means all rules contained in Rule Chapter 1540-01-02.
- (56) "Time to completion" means the total number of days from a student's start date until the completion date.
- (57) "Tuition" means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided. Pursuant to Rule .15(4) of these rules, all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."
- (58) "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.
- (59) "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.
- (60) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers academic undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs.
- (61) "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.
- (62) "Withdrawal rate" means the number of withdrawals minus the number of withdrawals due to special circumstances as a percentage of program enrollment, that is,  $\text{Withdrawal Rate} = \frac{(\text{Number of Withdrawals} - \text{Special Circumstance Withdrawals})}{\text{Program Enrollment}} \times 100$ .

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

#### 1540-01-02-.04 Determination for Required Authorization.

- (1) No postsecondary educational institution may create a physical presence unless the location is authorized by an affirmative vote of the Commission during a public meeting, is awarded provisional initial authorization, or is exempt. Authorization includes regular, provisional, and conditional authorization referred to in this Rule Chapter as well as optional expedited authorization referred to in Rule Chapter 1540-01-10.

- (2) Commission staff may recommend that the Executive Director take adverse action against any unauthorized school, college, university, or other type entity requiring authorization as a postsecondary educational institution. Such entities must make an immediate good faith effort toward compliance by submitting an Initial Authorization Application or Optional Expedited Authorization Application, as provided in Rule Chapter 1540-01-10, and the applicable fee by the due date provided by Commission staff.

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2005, 49-7-2006, 49-7-2011, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-02-.05 Exemptions.

- (1) T.C.A. § 49-7-2004 of the Act includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2004.
  - (a) Subject to subparagraph (b) of this rule, education that is:
    1. maintained or given by or on behalf of an employer or group of employers on a no-fee basis to employees or to persons they anticipate employing;
    2. maintained or given by a labor organization recognized by either the U.S. Department of Labor or the state (1) to its membership or apprentices or (2) on a no-fee basis to the individual;
    3. financed and/or subsidized by public funds, at no cost to the individual, and having a closed enrollment;
    4. given under a contract agreement, having a closed enrollment, on a no-fee basis to the individual, and not offering educational credentials that in the opinion of 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 on a no-fee basis 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, and T.C.A. § 49-7-2004(a)(2), any tuition charges, other fee charges, 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 a fee 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 registration 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 registration 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 of instruction previously received by students that are designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams shall be considered exempt from registration 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 registration requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and refrain from any misleading representations. Such misleading representations include:
    1. suggesting in any way that the training results in receipt of an educational credential, such as a degree;
    2. listing anticipated salary amounts; and
    3. suggesting that the entity is accredited.
  - (g) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers directly related to a sale of equipment or services are exempt from the provisions of authorization.
  - (h) Businesses offering short-term computer courses in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of Commission staff the courses are offered concurrently toward a vocational goal.
- (2) Any institution or program that qualifies as exempt under the Act and these rules is exempt from authorization or registration without a determination of the Commission. However, institutions can request that Commission staff issue a written determination of exemption as provided for in Rule .07 of these rules 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.

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

1540-01-02-.06 Minimum Standards for Authorization.

- (1) Institutions authorized to operate or seeking authorization in Tennessee must meet the minimum standards for authorization stated in the Act and these rules. Commission staff shall verify that an institution meets minimum standards for authorization through review of applications, registration requests, and certifications.
- (2) No out-of-state institution will be considered for authorization if it is not authorized or exempt from authorization in the state where it is primarily located.
- (3) In relation to the size and scope of the institution, it shall furnish adequate student services and resources to fulfill the mission and claims of the institution. Such services must have staff available to students with the knowledge and skills in areas such as: academic standing and satisfactory progress, admissions, employment opportunities or placement, intern/externships, library, and financial aid.
- (4) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective operation of the institution such that the institution is able to comply with and, as applicable, coordinate federal, state and accreditation requirements in a positive and educationally enriching environment to the benefit of students. Indicators of a lack 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, instances where a principal party has been or is involved with a postsecondary educational institution that ceased or ceases operation resulting in a loss of time or money for enrollees or prospective students or that had or has its institutional authorization to operate in a state revoked, or multiple findings in several different areas.
- (5) Institution Name:
  - (a) An institution's name may not duplicate another institution name or mislead potential students in violation of fair consumer practices or suggest guaranteed employment, completion, or other outcomes.
  - (b) An institution may not use the word "university" in its name unless the institution meets the definition of university in these rules and is accredited.
  - (c) An institution may use the word "college" in its name without a qualifier if the institution:
    1. meets the definition of college as set forth in the Act and 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 institution meets the definition of college as provided for in the Act and these rules and the name contains an appropriate qualifier, such as career, vocational, or Bible. For institutions authorized after October 1, 2016, the qualifier shall precede the word college.
- (6) In the event that an institution seeks authorization and Commission staff is aware of an outstanding complaint against the institution, the institution must resolve the complaint to the satisfaction of Commission staff before an Initial Authorization Application will be reviewed.

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, Requests, and Certifications of Compliance.

- (1) Due dates, denials, withdrawals, and review:
  - (a) For purposes of these rules, application refers to any application, request, or certification.
  - (b) When a due date is provided by Commission staff, a complete application in the prescribed format shall be received at the Commission by the close of business on the due date. Applications received after the due date will be deemed late, will be reviewed after all timely filed applications are reviewed, and may be subject to a late fee.
  - (c) Initial Authorization Applications and Program Registration Requests shall be filed in the prescribed format and may be filed at any time. All other applications shall be filed as provided for in these rules. Applications will be reviewed when complete.
  - (d) When received, Commission staff shall determine whether an application is complete and notify the applicant if the application is incomplete. An applicant will have thirty (30) calendar days to complete an incomplete application. Incomplete applications include applications submitted without all applicable fees or in a format other than the prescribed format and applications missing a required attachment. An application that is not completed by the prescribed due date will be deemed withdrawn.
  - (e) Denial or withdrawal of an application does not prevent the applicant from submitting a new application.
  - (f) When an application is before Commission staff for consideration, Commission staff will provide the applicant written notice of its final determination. If, upon written

notification of any action taken by Commission Staff, an aggrieved applicant desires a review by the Executive Director, the applicant shall notify the Executive Director within ten (10) business days of the date of the action of the Commission staff, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.

- (g) If, upon written notification of any action taken by the Executive Director, an aggrieved applicant desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the applicant shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (h) Any person, agent, group or entity aggrieved or adversely affected by any final Commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.

(2) Initial Authorization Application:

- (a) Institutions must demonstrate through the Initial Authorization Application that the institution meets minimum standards for authorization as provided for in the Act and these rules. The application shall require at a minimum:
  1. a name of the institution that complies with the Act and Rule .06(5) of these rules;
  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 or tree showing the institution's position in relationship to all affiliated legal entities;
  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 consistent with the objectives of the course or program of study;
  5. evidence demonstrating that the location meets the definition of location as provided for in these rules 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;

6. qualifications for instructional staff and administrative personnel;
7. designation of and contact information for an institutional director for each location and an affirmation from the director that the director will conduct the institution in accordance with the Act and these rules;
8. a description of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the director is replaced;
9. a continuous institutional surety bond;
10. a copy of the enrollment agreement the institution will use following receipt of authorization;
11. a copy of the pre-enrollment checklist the institution will use following receipt of authorization;
12. a copy of the institutional catalog the institution will use following receipt of authorization;
13. a copy of the student transfer of credit disclosure statement required by T.C.A. § 49-7-144 the institution will use following receipt of authorization;
14. any specific requirements as outlined under 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;
16. if participating in Title IV federal student financial aid programs, , the institution must meet financial standards and institutional stability deemed acceptable for eligibility in Title IV federal student financial aid programs and provide the following:
  - (i) the institution's Office of Postsecondary Education Identification (OPEID) number;
  - (ii) documentation from Federal Student Aid Office of the U.S. Department of Education listing the institution's federal financial composite score as described in 34 C.F.R. § 668.172; and

- (iii) 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, a letter of credit alternative or a provisional certification alternative as well as any related correspondence from the institution;
17. provide financial statements as follows:
- (i) as to institutions that are not currently operating a location,
    - (I) a year-to-date balance sheet prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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) calendar days and
    - (II) pro forma income statements prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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(5)(e) of these rules; or
  - (ii) as to institutions that are operating a location,
    - (I) current financial statement prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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) calendar days and
    - (II) pro forma income statements prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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(5)(e) of these rules and financial statements of all owners; and

18. such other information, clarification, or training deemed necessary by Commission staff.
  - (b) A separate application for authorization must be made for each location located outside of reasonable walking distance from a previously authorized location. Commission staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where administrative requirements are limited and precise.
  - (c) Initial Authorization may be granted for up to four (4) years, unless otherwise determined by the Executive Director or the Commission. Institutions with a four (4) year initial authorization term shall submit Certifications of Compliance as provided for in these rules in years one (1), two (2), and three (3) and a Reauthorization Application as provided for in these rules in year four (4).
  - (d) Commission staff will review an Initial Authorization Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, recommend that the Executive Director grant the institution provisional initial authorization as further explained at Rule .21 of these rules.
  - (e) The Commission is not required to authorize an institution, if, in its judgment:
    1. the institution is noncompliant with the Act or these rules;
    2. adequate provisions for the institution or its programs exist within the proposed service area;
    3. if there is insufficient evidence that adequate employment opportunities exist in the related occupations for persons successfully completing the institution's programs; or
    4. if the costs of a program are unreasonable in relation to the reasonably expected earnings in occupations for which the program is designed.
  - (f) In the event that the Initial Authorization Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.
- (3) Reauthorization Application:
- (a) Institutions with regular, or conditional authorization shall file a reauthorization application by a due date to be established by Commission staff and posted on the Commission's website.
  - (b) The Reauthorization Application constitutes a self-study through which institutions

must demonstrate that the institution continues to meet the minimum standards for authorization as provided for in the Act and these rules. The application may 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 as described at Rule .14(4) of these rules; s;
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. affirmation of the requirement to submit statistical data as described in Rule .18 of these rules; and
8. such other information or clarification deemed necessary by Commission staff.

- (c) Commission staff will review a Reauthorization Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant reauthorization for four (4) years, unless a shorter term is determined to be appropriate by the Executive Director or Commission. In the event that the Reauthorization Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.

(4) Change of Ownership Application:

- (a) Authorization must be issued to the owner or governing body of the applicant institution and is nontransferable.
- (b) A change of ownership occurs when a transaction results in the controlling interest in the postsecondary educational institution changing from an authorized owner to an unauthorized owner. In the event of a change of ownership, the new owner must

submit to Commission staff within five (5) 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 conditional authorization until the new owner obtains provisional initial authorization.
- (c) No later than thirty (30) calendar days after the grant of conditional authorization, the new owner shall submit an Initial Authorization Application and related applications or an Optional Expedited Authorization Application as provided for in Rule Chapter 1540-01-10.
- (d) The Change of Ownership Application shall require that the new owner provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.
- (e) Commission staff will review a Change of Ownership Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant the change of ownership and recommend that the Executive Director grant conditional authorization. In the event that the Change of Ownership Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied and the closure process described in Rule .23(b) of these rules will commence.
- (5) Program Registration Request:
- (a) In order to offer a program, an institution must submit a Program Registration Request either along with an Initial Authorization Application or, for previously authorized institutions, as a stand-alone application. Program registration is required prior to offering the program, which includes enrolling, advertising, recruiting or soliciting. Program Registration Requests shall be filed in the prescribed format and may be filed at any time.
  - (b) The Program Registration Requests may 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;
    2. designation of a credential that is defined in Rule .03, such as certificate, diploma or bachelor's degree that conforms to the requirement that no institution may offer an academic degree program unless the institution is accredited;

3. if applicable, evidence of approval from any subject matter expert state agency, board, or commission;
  4. a program overview;
  5. a job title and the associated Classification of Institutional Programs (CIP) code applicable to the job title;
  6. the most currently available entry level salary or wage data and job outlook projections for those CIP codes from a Tennessee or federal website;
  7. admission criteria confirmation and, if necessary, an explanation;
  8. instructor qualifications;
  9. a list of training equipment, indicating whether the equipment is owned or leased;
  10. if applicable, a list of all clinical or externships sites with which the institution has an executed agreement;
  11. if applicable, the maximum pupil to teacher ratio for each course that does not exceed the below acceptable ratios:
    - (i) allied health labs or clinicals with no subject matter agency oversight: 20-1;
    - (ii) class A truck cab: 4:1; and
    - (iii) class B truck cab: 2:1;
  12. 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 and
    - (ii) an explanation as to how educational goals and overall program goals are achievable through distance learning; and
  13. such other information or clarification deemed necessary by Commission staff.
- (c) An institution revises a program when it changes any element of a program that has been registered with the Commission, for example, the name of the program, tuition, credit or contact hours, mandatory other fees, length, or delivery mode, or when it changes the status of the program, for example, inactivates or discontinues the program. Institutions may revise programs as follows:



1. When an institution revises a registered program, by more than twenty-five percent (25%) in the last twelve (12) months or by changing the program delivery mode, name, or credential, then the institution must reregister the program by submitting a Program Registration Request at least thirty (30) calendar days prior to implementing the revision. When calculating twenty-five percent (25%) in the last twelve (12) months, all revisions made to quantifiable program elements in the last twelve (12) months should be totaled. For example, if in the last twelve (12) months, the institution raises tuition by five percent (5%) and adds ten percent (10%) to the program length, then the institution has revised the program by a total of fifteen percent (15%). If within twelve (12) months of these revisions, the institution raises other fees by fifteen percent (15%), then the total of the revisions in the last twelve (12) months is now thirty percent (30%) and the institution must reregister the program by submitting a Program Registration Request.
  2. In all other instances, an institution may revise a program at its discretion and report the revisions to Commission staff when completing the annual Reauthorization Application or Certification of Compliance.
- (d) Institutions shall not arbitrarily add a course, contact hours, or credit hours to an existing program in which a student would incur additional time or expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to:
1. state approval agency requirements;
  2. U.S. Department of Education recognized accreditor requirements; or
  3. professional licensure requirements.

In any event, the institution shall give adequate notice to all students affected prior to any change.

- (e) Commission staff will review a Program Registration Request and, upon finding that the registration demonstrates that the institution complies with all requisite standards, register the program by including it or revising it in the postsecondary program inventory. In the event that the Program Registration Request fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the registration by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the program registration will be denied.

(6) Change of Location Application:

- (a) Absent extraordinary circumstances, an authorized institution shall submit a Change of Location Application thirty (30) calendar days prior to moving and receive Commission Staff approval prior to operation. An example of an extraordinary circumstance is the unexpected loss of a lease. In the event of extraordinary circumstances, the institution shall submit a Change of Location Application and receive Commission Staff approval prior to providing instruction to students.
  - (b) The Change of Location Application shall include at a minimum:
    - 1. the address and general description of facilities such that a determination can be made that the institution has adequate space, equipment, and instructional material;
    - 2. evidence demonstrating that the location meets the definition of location as provided for in these rules 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;
    - 3. 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 zoning and the safety and health of all persons upon the premises; and
    - 4. such other information or clarification deemed necessary by Commission staff.
  - (c) Commission staff will review a Change of Location Application and conduct an authorization site visit, if Commission staff determines an authorization site visit is necessary. Upon finding that the application and an authorization site visit, if necessary, demonstrate that the institution complies with all requisite standards, Commission staff will grant the change of location. In the event that the Change of Location Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.
  - (d) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.
- (7) School Personnel Application:
- (a) Authorized Institutions must maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. Following initial

authorization, an institution must notify Commission staff when there is a change of institutional director, including the appointment of an interim institutional director, by submitting a School Personnel Application no later than five (5) business days after the hire or appointment date.

- (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.
  - (c) Commission staff will review a School Personnel Application and, upon finding that the qualifications of the institutional director meet all requisite standards, approve the application. In the event that the School Personnel Application fails to demonstrate that the qualifications of institutional director meet all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.
- (8) Institution Name Change Application:
- (a) An authorized institution shall submit an Institution Name Change Application thirty (30) calendar 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. affirmation that the institution following approval and prior to using the new name will update the pre-enrollment checklist, enrollment agreement, transfer of credit disclosure statement, and catalog; and
    5. such other information or clarification deemed necessary by Commission staff.
  - (c) Commission staff will review Institution Name Change Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, Commission staff will grant the change of name. In the event that the Institution Name Change Application fails to demonstrate that the institution

complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.

(9) Certification of Compliance

- (a) Annually during the authorization term, institutions with regular or conditional authorization shall file a Certification of Compliance by a due date to be established by Commission staff and posted on the Commission's website.
- (b) The Certification of Compliance shall require at a minimum that the institution self-certify that it is engaged in activities and operations in compliance with the Act and these rules, the institution provide an updated comprehensive program list, and the certification must be signed by the institutional director and, if other than the institutional director, the owner, or a representative thereof. For institutions that do not receive Title IV funds, the Certification of Compliance may require financial statements as described at Rule .14(4) of these rules.
- (c) Commission staff will review a Certification of Compliance and, upon finding that the certification demonstrates that the institution complies with all requisite standards, notify the institution of such. In the event that the Certification of Compliance fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the Certification of Compliance by providing written notice of the deficiencies to the institution and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.

(10) Exemption Determination Request

- (a) The Exemption Determination Request may include at a minimum:
  - (1) full contact information for the requestor;
  - (2) the statutory or rule citation justifying exemption;
  - (3) an argument applying the statutory or rule citation to operations of the requestor;
  - (4) documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers; and

- (5) such other information or clarification deemed necessary by Commission staff.
- (b) Commission staff will review an Exemption Determination Request and, upon finding that the exemption as requested is justified by statute or rule, notify the institution of such. In the event that Commission staff requires additional information, Commission staff shall defer the Exemption Determination Request by requesting such information and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the Exemption Determination Request will be denied.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.08 Regulations for Specific Institutions and Programs.

(1) Degree Granting Institutions:

- (a) Authorization to offer any degree in the state will require either institutional accreditation by a U.S. Department of Education recognized accreditor or authority to grant degrees by affirmative vote of the Commission.
- (b) Unaccredited institutions seeking authority to grant degrees must meet, in addition to the requirements in the Act and these rules for initial authorization, at a minimum:
  - 1. the institution shall incorporate instructional procedures, texts, and materials appropriate to the purpose, curriculum and standards of other degree granting postsecondary educational institutions offering similar programs in the state;
  - 2. for undergraduate and degree granting programs and except as noted further in subparagraph (c) of this rule, twenty-five percent (25%) of the total program must be in general education courses and should be indicated separately in the curriculum presented;
  - 3. library resources and holdings shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
  - 4. demonstration that the degree and the program have merit and value academically, professionally, or vocationally in Tennessee; and
  - 5. master's and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical, and interpretive thinking, use of primary documents or resources, and independent research skills.

- (c) Undergraduate degree programs must include at least twenty-five percent (25%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are lesser or for a unaccredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that twenty-five percent (25%) of the program for job skills courses.
  - (d) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student-to-student and student-to-staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.
- (2) Unaccredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the course or program.
- (3) Bartending institutions:
- (a) Pursuant to T.C.A. § 49-7-115, all schools involved in training in the areas of management, operation, procedures, or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.
- (4) Programs leading to licensure, certification, registration or similar recognition:
- (a) Students shall not be required to take an examination given by a private or public third-party as part of an institution's program. For example, a truck driving program cannot include successful completion of the Commercial Driver's License examination.
  - (b) Institutions offering programs in fields that require a student to take an examination in order to be licensed or similarly recognized before the student can be employed in the field shall provide as part of the Reauthorization Application student-level data as to:
    1. whether the student sat for the examination; and
    2. whether the student passed the examination.
  - (c) Institutions may request a waiver from Commission staff of subparagraph (4)(b) of this rule. Commission staff shall grant the waiver upon receipt of documentation from the institution demonstrating that the examination provider or related state agency will not provide testing data to the institution.

- (5) For programs of interest to other state agencies, such as dental programs, Commission staff will endeavor to streamline processes when a subject matter expert state agency has a law that is contrary or duplicitous of the Act or these rules.
- (6) Computer Training:
  - (a) Businesses offering specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation of that training in the state.
- (7) Institutions that require students to complete cleaning or similar tasks as part of any course or program shall limit such tasks to those that are reasonably related to the field for which the student is being prepared and that are consistent with the types of tasks that the student would be expected to complete as part of the student's primary duties or functions when working in the field that the education is preparing the student to enter.

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

#### 1540-01-02-.09 Bonds.

- (1) Institutions, other than public institutions, must, on forms provided by the Commission, secure, from a surety company qualified and authorized to do business in Tennessee, a continuous surety bond in the amount of ten thousand dollars (\$10,000).
- (2) Institutions must provide a bond for each authorized location.
- (3) 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.
- (4) Commission staff shall provide the institution at least thirty (30) calendar days written notice that authorization shall be made conditional, subject to revocation, by operation of law when the institution is no longer covered by a surety bond. Absent exceptional circumstances, a postsecondary educational institution shall not continue to engage in activities or operations without a surety bond for more than ninety (90) calendar days.

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

#### 1540-01-02-.10 Audits.

- (1) Commission staff may conduct audits to ensure compliance with the Act and these rules. Audits may be performed at the 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 Commission staff may recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.
- (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, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.
- (5) Tuition increases that in the opinion of the Commission are excessive, unreasonable or exceed initial disclosure to students may result in an in-depth audit of the institution's financial stability.

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

1540-01-02-.11 Institution Catalog.

- (1) Each institution must publish a catalog that includes at a minimum:
  - (a) the full and correct 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 and credential requirements for faculty;
  - (e) the institutional calendar, including holidays, application and registration periods and the beginning and ending dates of terms, courses, or programs;
  - (f) the institutional admission procedures and entrance requirements, including late admission, if permitted;
  - (g) the institutional attendance policy, including minimum attendance requirements, how attendance will be determined, the withdrawal policy, the circumstances under which a student will be interrupted for unsatisfactory attendance, and the conditions under which a student may be readmitted;



- (h) the institutional policy covering satisfactory progress, including an explanation of any grading system used, a description of any probation policy, and a description of the institutional system for making progress reports to students;
- (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;
- (j) a description of each program offered including objectives, costs, length, program components, and course requirements, including, if applicable, cleaning or similar tasks as described in Rule .08(7). , Institutions that require students to complete cleaning or similar tasks as part of any program curriculum shall describe such tasks and explain how the tasks are reasonably related to the field for which the student is being prepared and are consistent with the types of tasks that the student would be expected to complete as part of the student's primary duties or functions when working in the field that the education is preparing the student to enter;
- (k) a description of student services provided, including whether placement assistance is available and, if none, so state;
- (l) a description of the facilities and equipment used for educational programs;
- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy, including the procedure for determining the last date of attendance and the time within which a refund will be provided;
- (o) a statement provided within the first four pages of the catalog which reads as follows: "The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization is based on an evaluation of minimum standards concerning the provision of education, ethical business practices, and fiscal responsibility";
- (p) a description of the student grievance procedure, including:
  1. the title, address, and telephone number of the institutional employee designated to receive student complaints;
  2. the timeframe for the institution's investigation of the complaint, the steps of the investigation and the timeframe and method for communicating the written decision to the student;
  3. if the institution allows for nonbinding mediation or voluntary arbitration, the catalog must describe the process in its entirety; and
  4. the address and telephone number of Commission staff along with a statement that reads: "Any person claiming damage or loss as a result of any

act or practice by this institution that may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1540-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization after exhausting the grievance process at the institution."

- (q) a disclosure regarding the ability to transfer credit earned to another institution, with language sufficient to describe limitations on the transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:

"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;
  - (s) the ATB testing policies, if any, in accordance with Rule .12(3) of these rules; and
- (2) Institutions may provide electronic catalogs to students as long as the institution provides the student a hard-copy upon the student's request.
  - (3) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;
  - (4) Catalogs should be written at a level that allows prospective students and enrollees to comprehend the information and make informed decisions.

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

1540-01-02-.12 Admissions Standards.

- (1) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written.
- (2) An institution should not enroll a student in a program leading to licensure when the institution knows or, by the exercise of reasonable care, should know the student is or will be ineligible to obtain licensure in the occupation for which the student is being trained. For example, an institution should not admit a student if the institution knows the student has a prior legal conviction that will prevent the student from obtaining licensure. If a student who is ineligible or likely to be ineligible for licensure desires to enroll in such a program, regardless of license eligibility, the institution may admit the student after the student submits a signed, written statement acknowledging the student is or is likely to be ineligible for licensure. The institution shall provide the student a copy of the statement and

maintain the original in the student's file.

- (3) Basis of admission shall be at a minimum:
- (a) Students enrolling in a certificate or diploma program must possess a high school diploma, a high school diploma equivalency, 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's degree program must possess, at a minimum, a high school diploma, a high school diploma equivalency, or postsecondary credit in a degree program.
  - (c) Students enrolling in a post-baccalaureate program must possess, at a minimum, a baccalaureate degree from an institution judged to be appropriate by the Commission.
  - (d) A student may be admitted as an ATB student if the student has terminated secondary enrollment and is beyond the age of compulsory attendance. An institution may use a standardized test formerly or currently recognized by the U.S. Department of Education or an ATB approved by Commission staff prior to January 1, 2023. The institution shall request approval from Commission staff before using the test and shall state the 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. The following applies to all ability-to-benefit tests:
    - 1. Tests shall be administered in a secure environment, for example, monitors present.
    - 2. Tests shall not be administered in a manner that is inconsistent with the recommendations of the standardized test developers.
    - 3. An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
- (4) Proof of the basis of admission shall be maintained in the student file in accordance with Rule .15 of these rules.

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

1540-01-02-.13 Enrollment Checklists, Agreements, and Disclosures.

- (1) Pre-Enrollment Checklist: Prior to signing an enrollment agreement, institutions shall require an institution representative and the prospective student to sign and date a pre-enrollment checklist using a form provided in the Initial Authorization Application. The document must clearly indicate that it is the pre-enrollment checklist, include the full and correct name and address of the authorized location, 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 virtually or in-person (not applicable to institutions that deliver all instruction through distance learning);
- (b) received an institution catalog and all addendums and attachments referenced therein. If the catalog and addendums/attachments are provided electronically understands that the student may request a hard-copy of any of the documents at any time;
- (c) was given the time and opportunity to review the institutional policies in the catalog;
- (d) knows the length of the program for full-time and part-time students in academic terms and actual calendar time;
- (e) has been informed of the total tuition and other fees of the program;
- (f) has been informed of the estimated cost of books and any required equipment purchases such as a computer, specialized tools, or art supplies;
- (g) has been given a copy of the institution refund policy;
- (h) has executed a Transfer of Credit Disclosure Statement in compliance with T.C.A. § 49-7-144 and understands the specific limitations should the institution have articulation agreements;
- (i) has been given the address and telephone number of Commission staff along with a statement that reads: “Any person claiming damage or loss as a result of any act or practice by this institution that may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1540-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization after exhausting the grievance process at the institution.”;
- (j) has received the most recent withdrawal, completion, and placement data as calculated by the Commission by including in the checklist:
  - 1. For institutions previously authorized by THEC and under new ownership:
    - (i) 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/bureaus/student-aid-and-compliance/postsecondary-state-authorization.html>.” or

- (ii) a copy of the institution's most recent Annual Performance Report created by Commission staff and posted on the Commission's website.
  - 2. For institutions that are currently authorized by THEC but zero students were enrolled in the program the previous fiscal year, the following statement: "Understands that withdrawal, completion, and placement information is not currently available because the program has had zero students enrolled in the previous fiscal year. This information will be provided by THEC approximately one year after the institution reports enrollment for this program."
  - 3. For institutions that are offering a new program or institutions that are not currently authorized by THEC, the following statement: "Understands that this is a new program and placement, completion and withdrawal information will be provided by THEC approximately one year after the institution begins offering the program."; and
  - (k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- (2) Enrollment Agreement: Institutions enrolling an individual in a course or program shall require an institution representative and the prospective student to sign and date an enrollment agreement prior to the student attending one (1) session of class, turning in one (1) assignment, or receiving one (1) distance learning lesson, whichever occurs first. The document must clearly indicate that it is the enrollment agreement (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:
    1. the full and correct name and address of the authorized location of the institution;
    2. the name, address, and social security number or unique student identification number of the student;
    3. the date training is to begin and program length;
    4. if students have the option to attend part-time, full-time or part-time status of the student;
    5. the projected date of completion;
    6. the program name as approved by the Commission;
    7. the total cost of the program, including itemized costs for tuition and other

fees, as defined in Rule .03(35) of these rules, along with an indication of which fees are optional and which fees are program related or post-completion related, for example, third-party testing fees;

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

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

1540-01-02-.14 Financial Standards.

- (1) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.
- (2) The institution shall maintain financial and business practices in-line with common business procedures utilizing standard accounting practices.
- (3) The institution shall maintain and be prepared to demonstrate at any time financial resources adequate to fund and maintain the following:
  - (a) facility maintenance and overhead;
  - (b) staff and faculty payroll;
  - (c) books, supplies or equipment utilized by students; and
  - (d) general operating costs.
- (4) When financial statements are required by the Reauthorization Application or the Certification of Compliance, such statements shall be completed for the fiscal year that ended prior to one hundred-twenty (120) calendar days of the application due date and shall be prepared in the following format and manner:
  - (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, including an income statement, balance sheet, statement of cash flow, and notes, 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 a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers.
  - (d) As an alternative to subparagraphs (5)(a) through (c) of this rule, institutions owned by the same parent company may submit an audited consolidated corporate financial statement. The audited consolidated statement shall be prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant. Commission staff or the Commission may request

additional campus or institution-specific information where needed to better understand the financial stability of a single authorized location or to protect the public interest.

- (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.
  - (c) Related parties must be disclosed, including, but not limited to, related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.
  - (d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis.
  - (e) Within three (3) years from initially receiving authorization, neither the ratio of total revenues to total expenditures nor the ratio of current assets to current liabilities of either the authorized location or the parent company, where applicable, shall be less than 1:1 without convincing explanation.
  - (f) An Institution shall elect during reauthorization whether it will rely on the financial statements of the authorized location or the parent company and must use the financial statements of the elected entity for at least three (3) consecutive years.
- (6) When there are questions about the institution's financial stability, the Commission staff 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.
- (7) All institutions must maintain a business account with a financial institution that is federally insured in said institution's name.

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

1540-01-02-.15 Institution and Student Records.

- (1) Institutional directors must maintain on-site a current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, and financial reports.
- (2) Institutions shall retain for three (3) years a record of student complaints that follow the institution grievance process, including a copy of the complaint, any investigatory



documents, and a statement of the matter's disposition.

- (3) Student financial records must be maintained and open for inspection and copying by Commission staff in accordance with applicable confidentiality laws.
- (4) For each student, the institution must maintain an up-to-date reconciled account statement as a separate document. The statement must clearly reflect:
  - (a) 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 indicate the period of enrollment for which the student is being charged, for example, if the tuition charge is for five hundred (500) contact hours of instruction, the account statement might read "Tuition Charged for 500 Contact Hours" or if the tuition charge is for one (1) semester of instruction, the account statement might read "Tuition Charged for Spring 2022 Semester."
- (5) Institutions must maintain a file for each prospective student or student enrolled in a program or course for three (3) years after the student's withdrawal from or completion of the program or course of enrollment. The file shall contain at a minimum:
  - (a) the executed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and Rule .13(3) of these rules;
  - (b) documentation evidencing the student's basis for admission as provided for in paragraph (6) of this rule;
  - (c) the executed pre-enrollment checklist;
  - (d) the executed enrollment agreement;
  - (e) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress;
  - (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; and
  - (g) an up-to-date reconciled account statement.
- (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, HiSET, 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.
- (7) Official documentation is a statement of the student's academic record received directly from the issuing institution or agency such as a transcript or score sheet. Paper transcripts printed on security sensitive paper that contains the issuing institution's seal or signature of an official from the institution is acceptable admission documentation. Electronic transcripts or scores sheets not printed on security sensitive paper must include indicia that the transcript or score sheet was received directly from the issuing institution or agency such as accompanying email correspondence or the envelope.
- (8) Institutions must offer a transcript for all programs other than programs registered as certificate programs. For a certificate program, an institution must provide a certificate to completers of the program and may offer a transcript to all enrolled students. In any event, all transcripts and certificates shall meet the requirements of this rule. Institutions offering programs where a subject matter expert agency requires that the institution maintain a transcript must do so.

- (a) Transcripts and certificates for each student enrolled in a program or course offered by the institution shall be maintained for the life of the institution and provided to DPSA upon closure as provided for in Rule .23 of these rules.
- (b) Transcripts shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The transcript shall include at a minimum the:
  - 1. full and correct name and address of the authorized location of the institution;
  - 2. first and last name of the student;
  - 3. last four digits of the student's social security number;
  - 4. program name as registered with the Commission;
  - 5. status of student, for example, active, withdrawn, probation, leave of absence, or graduate;
  - 6. official date recorded for all student withdrawals and graduations;
  - 7. beginning date or academic term with the year for each course attempted;
  - 8. as applicable to the type of institution, credit or contact hours attempted and earned;
  - 9. name of each course and, if any, the course number as listed in the institution catalog along with the corresponding grade received;
  - 10. indication of credits given by transfer from another institution or credit by exam;
  - 11. cumulative Grade Point Average (GPA);
  - 12. date the transcript was last updated and/or printed; and
  - 13. signature of an institution official.
- (b) Certificates shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The certificate shall include at a minimum the:
  - 1. complete name and address of the institution;
  - 2. first and last name of student;

3. program name as registered with the Commission;
  4. a certificate award date; and
  5. the signature of an institution official.
- (9) In lieu of hard copies of transcripts and certificates, an institution may maintain transcripts and certificates by electronic storage provided that the institution has a process for maintaining an up-to-date backup of the information in a separate system or at a different location. Commission staff must have complete and easy access to review student transcripts and certificates during authorization site visits and audits such that the institution can print any requested records upon request.

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

#### 1540-01-02-.16 Personnel and Instructor Qualifications.

- (1) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training, such as official transcripts, for each personnel and instructors must be maintained on-site at the authorized location. Institutions must provide this evidence at any time upon receiving a request from Commission staff.
- (2) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities. The process for selection of administrative personnel and instructors shall ensure that administrative personnel and instructors meet the qualifications in this rule. Additionally, institutions shall take reasonable actions to ensure that a supervisor of any experiential learning, regardless of whether the learning is conducted at the location or in the field, is qualified to supervise the learning. For example, the supervisor must hold an appropriate license if the subject is a vocation requiring licensure.
- (3) Administrative personnel at an authorized institution must be graduates of an accredited college or university or have sufficient background and training in the administrator's area of responsibility. If the institution employs a director of education, that director shall possess a baccalaureate degree or the highest educational credential offered by the institution, whichever is higher. 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 are not included as administrative personnel.
- (4) Institutional Directors:
  - (a) Each institution must designate one (1) 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 or Commission staff.

- (b) Institutional owners must ensure that each authorized location has an institutional director at the authorized location for at least fifty percent (50%) of the operational time each week the school has students present unless other provisions have been approved by Commission staff.
  - (c) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these rules including, but not limited to, advertising, records, contracts, required benchmarks, annual due dates, and fee payments.
  - (d) The institutional director at an authorized institution must:
    - 1. be a graduate of an accredited postsecondary educational institution 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 education shall equal at least five (5) years.
- (5) Instructors:
- (a) Instructional staff for all institutions must be selected at a minimum on the basis of these rules.
  - (b) Instructors in a trade related or specific skill area must have documented proficiency and practical applied experience in that trade or skill.
  - (c) An instructor must hold the appropriate license if the subject is a vocation requiring licensure.
  - (d) An instructor must be qualified by education and experience/background and must meet at a minimum the following qualifications:
    - 1. Doctorate level courses:
      - (i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:
        - (I) a doctorate degree with a major or concentration in the subject area to be taught; or
        - (II) a doctorate not in the subject area but with a minimum of one (1) year of practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours of doctoral

level courses in the subject.

2. Master's level courses:

- (i) Hold a master's or higher degree from a college or university judged to be appropriate by the Commission and either:
  - (I) a master's or higher degree with a major or concentration in the subject area to be taught; or
  - (II) a master's or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in graduate level courses in the subject.

3. Baccalaureate level courses:

- (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
  - (I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or
  - (II) a baccalaureate or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

4. Associate level courses:

- (i) Meet the minimum requirements for doctorate, master's or baccalaureate level; or
- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:
  - (I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or
  - (II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and

satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

5. Diploma and certificate level courses or programs:
  - (i) Meet the minimum requirements for doctorate, master's 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 or licensure in the field 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 minimum, earned master's degrees.
- (6) The Executive Director may approve a variance from the specific qualifications in paragraph (5) of this rule with sufficient justification and an assurance that the program quality will not be lessened. In such a situation, the institutional director must submit written justification and documentation using the School Personnel Application submission within five (5) business days of the personnel hire date. In addition, the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to Commission staff upon request.
- (7) Instructors shall be evaluated annually in writing by students and annually in writing by the institutional director or chief academic/instructional officer. The institution shall maintain such evaluations for six (6) years from the date of the evaluation.
- (8) Agents:
  - (a) An institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.
  - (b) Any student solicited or enrolled by an agent whose actions are in contravention with these rules is entitled to a refund from the institution of all moneys paid. Upon payment by the institution, the student shall release the institution from any further obligations to the student. Any contract signed by a prospective student as a result of solicitation or enrollment by an agent shall be null and void and unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases

where the contract has been fully executed between the institution and the student, the student is not entitled to a refund solely because the student was improperly solicited or enrolled by an agent.

- (c) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to, the following:
  - 1. administering the admission test;
  - 2. advising students about financial aid other than informing the student of the general availability of financial assistance;
  - 3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
  - 4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have;
  - 5. soliciting enrollments in a program which has not been approved by the Commission; or
  - 6. otherwise acting in contravention of these rules.

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

#### 1540-01-02-.17 Cancellation and Refund Policy.

- (1) All authorized institutions must comply with the laws of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws are revised.
- (2) An authorized institution may use the following refund policies:
  - (a) the refund policy contained in paragraph (3) of this rule
  - (b) an institution policy, as provided for in paragraph (3) of this rule except the institution may increase the percentage listed in paragraph (3)(c) to more than 20%; or (b) as applicable, a refund policy mandated by an accreditor or as a condition for students of the institution to participate in a governmental student assistance program, such as Veterans Benefits.
- (3) The refund policy is as follows:
  - (a) A student who at any time withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend class 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.



- (b) In addition to subparagraph (4)(a) of this rule, if a student fails to begin class on the program start date as written in the enrollment agreement or as amended by the institution, the refund shall equal the sum of all refundable fees paid and, if the student has institutional loans, forgiveness of the amounts owed by the student, less an administrative fee of one hundred dollars (\$100.00).
  - (c) In addition to subparagraph (4)(a) of this rule, if after the program has commenced and before expiration of twenty percent (20%) or less of the period of enrollment for which the student was charged, a student withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend classes, the refund shall be a pro rata portion of refundable fees, less an administrative fee of one hundred dollars (\$100.00). If applicable, the refund shall include forgiveness of institutional loans. For example, if a student's last day of attendance equals ten percent (10%) of the period of enrollment for which the student was charged, the institution is entitled to retain only ten percent (10%) of the refundable fees charged for the period of enrollment as well as one hundred dollars (\$100.00). However, in no instance will the institution be responsible for any refund in excess of the amount paid by or on behalf of the student for the period of enrollment for which the student was charged.
  - (d) Except as provided for in subparagraph (4)(a) of this rule, if after expiration of twenty percent (20%) of the period of enrollment for which the student was charged, a student withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend classes, the student may be deemed obligated for one hundred percent (100%) of the refundable fees charged by the institution up to the last period of enrollment charged.
  - (e) For a student who cannot complete one (1) or more classes because the institution discontinued such a class during a period of enrollment for which the student was charged, the institution shall refund the sum of all refundable fees paid and, if the student has institutional loans, forgive the amounts owed by the student.
- (4) For purposes of calculating percentages of attendance in clock hour programs the number of scheduled hours up to the last date of attendance will be the numerator. For credit hour programs, percentages are calculated based on calendar days.
  - (5) When computing refunds pursuant to the refund policy, the last day of attendance for a student who meets the definition of enrolled shall be either:
    - (a) the date of the student's last recorded day of attendance or
    - (b) When applicable, the date the student failed to return from an approved leave of absence.
  - (6) Pursuant to Rule .15(4) of these rules, the reconciled account statement must indicate the period of enrollment for which the student is being charged for each tuition charge. If the institution does not maintain the requisite account statement or the reconciled account

statement does not clearly indicate the period of enrollment for which the student is being charged, the institution shall be liable for all refundable fees paid by or on behalf of the student.

- (7) In any event, the last date of attendance will be determined and any refund due disbursed within forty-five (45) calendar days of the last date of attendance.

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

1540-01-02-.18 Statistical Data Collections.

- (1) Annually by October 15 or the next business day if October 15 is a state holiday or weekend day, all authorized institutions shall provide student-level statistical data on a Commission 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. 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 instructional value and administrative capability, 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 Executive Director 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-.19 Fair Consumer Practices and Complaints.

- (1) All institutions and their administrative personnel, instructors, agents, and other staff shall act in accordance with fair consumer practices. Fair consumer practices means honesty, fairness, and disclosure to students in areas including, but not limited to, class schedules, recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, and competitors.

- (a) Institutions shall ensure that nothing is hidden and all verbal and written representations by the institution are accurate.
  - (b) Fair consumer practices require an institution to apply its policies as written. The student shall be subject to the written policies in place at the time of the student's initial enrollment into the applicable program. Any changes to the written policies that occur during the student's period of enrollment shall only be applied to the student if the student signs and dates a document acknowledging the new policy and agreeing that said policy shall be applied to the student.
- (c) As applicable, verbal and written representations must reasonably allow enrolled or perspective students to make informed decisions concerning their investment of time or money and provide information needed to understand, evaluate, and comply with institution policies and program requirements.
- (2) Students have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.
- (3) Institutions may not use mandatory arbitration provisions.
- (4) Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure, or discrepancies between verbal and written information, intimidation, or coercion may require corrective public announcements in addition to adverse action as set forth in Rule .22 of these rules.
- (5) An institution must report to Commission staff in writing within thirty (30) calendar days any unresolved written complaint filed in a Tennessee court about the institution of which the institution is knowledgeable.
- (6) 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.
- (7) 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.

- (8) Any person claiming damage or loss as a result of any act or practice by an authorized postsecondary educational institution or its agent that is a violation of the Act or these rules, may file a verified complaint on forms provided by the Commission. Any student who files a complaint or on behalf of whom a complaint is filed must first exhaust the grievance process at the institution. Parties to the complaint shall be the complainant and any named institution or agent thereof. 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 .24 of these rules.
  - (b) Any complaint as described in (a) shall be commenced within three (3) years of the subject student's withdrawal from or completion of the program or course of enrollment.
  - (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 resolution.
  - (f) When resolution is not reached and if, based on all the evidence obtained through the investigation, Commission staff finds that any person, agent, group, or entity is, is about to, or has been violating the Act or these rules:
    - 1. Commission staff may recommend that the Executive Director take action as provided for in T.C.A. § 49-7-2010 and § 49-7-2017 and these rules. Parties to the complaint shall be provided an opportunity to show cause why such recommendations should not be forwarded to the Executive Director. Such opportunity shall detail the basis for the findings and provide any party ten (10) business days to respond.
    - 2. The Executive Director shall act on a recommendation from Commission staff after the time for the show cause response has expired by providing a Notice of Decision to the parties to the complaint. Such notice shall explain the right to a hearing and review by the Commission as provided in T.C.A. § 49-7-2012. Any request for review shall be filed with the Commission within ten (10) business days of the date of the Notice of Decision, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review shall be in writing, signed, 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.

- (g) When resolution of the complaint is not reached and if, based on all the evidence obtained through the investigation, Commission staff makes no findings or determines that an adverse action recommendation is not justified:
    - 1. Commission staff shall provide the parties to the complaint notice of the lack of findings or determination.
    - 2. If, upon written notification of any action taken by Commission Staff, an aggrieved party to a complaint desires a review by the Executive Director, the party shall notify the Executive Director within ten (10) business days of the date of the action of Commission staff, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
    - 3. If, upon written notification of any action taken by the Executive Director, an aggrieved party to the complaint desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the party shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
  - (h) Any party to the complaint aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.
  - (i) A complaint investigation may be placed on hold or closed if litigation or investigation involving similar issues is on-going at any court or other government agency.
- (9) Notwithstanding the provisions of paragraph (8) 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, 49-7-2011, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.20 Representations, Advertising, and Solicitations.

- (1) Institutions may reference having authorization in advertising, promotional material, and on letterhead stationery using the following language: "(name of institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must appear with the same size and type of font used throughout the statement.

- (2) Entities or individuals that own an authorized institution as well as a related business, for example, truck driver training and trucking company, must maintain clear separation in function and advertising of the business and the institution.
- (3) The Commission logo may not be used by an institution.
- (4) Institutions authorized by the Commission that have a website on, advertise through, or offer instruction via the internet must state on the institution's home page or Tennessee specific webpage: "[name of institution] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission." The entire statement must be used, have the same size font, and type of print. The reference to the "Tennessee Higher Education Commission" must be a hyperlink to [www.tn.gov/thec](http://www.tn.gov/thec).
- (5) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and is an accreditor recognized by the U.S. Department of Education.
- (6) No statement shall be made that the institution or its courses of instruction have been approved by a state or the federal government unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.
- (7) All advertisements seeking prospective students must include and clearly indicate the full and correct name of the institution, the authorized location city, and, if out-of-state, the authorized location state.
- (8) Any promotion of the institution must primarily be based on the institution's educational programs, not student aid promotion or the number of jobs available, must not guarantee employment, and must comply with fair consumer practices as described in Rule .19 of these rules.
- (9) Other than entry level salary data available on a Tennessee or federal government website, no dollar amount will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by Commission staff.
- (10) Institutions shall not use images of any kind in such a manner as to convey a false impression as to the location's size, importance, equipment, or facilities.
- (11) Institutions or representatives shall not make deceptive statements concerning other institutions when attempting to enroll students.
- (12) Other than referencing the most recent rates calculated by Commission staff, no institution shall use job placement percentages or related statistics except by written permission of Commission staff.
- (13) If loans are available at the institution, the school may advertise them only with the language "student loans available" in type no larger than that used for the name of the institution.

This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.

- (14) Promotional materials or agent solicitation practices must not state or infer that programs are available on a free tuition basis unless the tuition and other fee amount reported to Commission staff is zero (0).
- (15) No statement shall be made by an institution that the programs or courses are transferable to another institution without a current articulation agreement or transfer of credit agreement.
- (16) Claims must not be vague. For example, "award winning" institution should include the full name of the award in advertisement; specify year of any such attainment, and the source of the award.
- (17) No institution may publicize, promote or imply an accreditation that is not recognized by the U.S. Department of Education.
- (18) If an institution represents that it has an educational certification from any entity, other than those given by other Tennessee agencies, the institution must produce at the request of Commission staff proof of such certification.

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

#### 1540-01-02-.21 Authorization Status.

- (1) Provisional Initial Authorization
  - (a) An award of provisional initial authorization shall be subject to review and ratification by the Commission.
  - (b) If an award of provisional initial authorization is ratified by the Commission, authorization becomes regular or conditional as determined by the Commission.
  - (c) If an award of provisional initial authorization is not ratified by the Commission, the institution shall cease all activities and operations as directed by Commission staff in accordance with the Act and these rules.
  - (d) An institution awarded provisional initial authorization may engage in activities and operations; however, limitations as to time, procedures, functions, or other conditions may be imposed as deemed necessary. Such limitations may include, but not be limited to, notifying prospective students in the enrollment agreement that the institution:
    1. is authorized provisionally subject to ratification by the Commission, and
    2. notwithstanding Rule .17 of these rules, must refund all moneys paid by or on behalf of prospective or enrolled students in the event that the Commission does not ratify the award of provisional authorization thereby



requiring the institution to cease activities or operations such that students are unable to begin or complete the program of enrollment.

(2) Regular Authorization:

- (a) Provisional authorization shall become regular authorization following review and ratification of the Commission.

(3) Conditional Authorization or Registration:

- (a) Conditional authorization or registration is authorization or program registration, but with conditions, such as reporting requirements, performance standard requirements, securing new or additional bonds, a limited period of time to operate such as during change of ownership, or for the purpose of teaching out existing students. Institutions with conditional authorization or registration may also be required to suspend or cease any part of institutional activity, such as enrolling students, advertising, or conducting specific classes or programs. Such suspension or cessation shall remain in effect until activities precipitating the condition are corrected and Commission staff has completed all related reviews and investigations. Conditional authorization or registration may be issued when deemed necessary to protect the public interest.
- (b) An institution may request conditional authorization, including, but not limited to, suspension of the operation, rather than expose the institution to adverse action, for situations such as unexpected loss of lease, extended inactivity, or reorganization.
- (c) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.

(4) Revocation of Authorization or Program Registration:

- (a) Revocation of authorization or program registration is the immediate and complete withdrawal of the institution's authorization or program registration to enroll, advertise, or operate a postsecondary educational institution in the state.
- (b) Possible grounds for immediate revocation of authorization or program registration include but are not limited to:
  - 1. loss of right to use the authorized location without immediate notification to the Commission;
  - 2. instances where a principal party has been or is involved with a postsecondary educational institution that ceased or ceases operation resulting in a loss of time or money for enrollees or prospective students, or that had or has its institutional authorization in a state revoked;

3. a pattern of deceptive practices;
  4. failure to correct any situation that resulted in conditional authorization or program registration within a reasonable time period to be determined by the Executive Director;
  5. disregard for any specific directive issued by the Commission, the Executive Director, or Commission staff;
  6. failure to pay assessed fines;
  7. closing an institution without proper notification to the Commission or failure to complete all required closure obligations; and
  8. failure to submit a Certification of Compliance by the required due date or a Reauthorization Application by the authorization term expiration.
- (c) Revocation of authorization or program registration shall not relieve an institution of complete compliance with the requirements in these rules applicable to an institution closing, including, but not limited to, refunds to students, arranging instructional teachouts, and securing the disposition of student records.

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

1540-01-02-.22 Causes for Adverse Action.

- (1) The Commission or Executive Director in the interest of the public welfare, consumer protection and statutory responsibility may assess fines of five hundred dollars (\$500) per day per violation or revoke or make conditional the authorization of an institution or its program registrations under the process as given in subparagraph .02(2)(e) of these rules for reasons including, but not limited to:
  - (a) disregard of provisions of the Act and/or these rules;
  - (b) willful violation of any commitment made in an application for authorization or reauthorization;
  - (c) presenting to the general public or students or prospective students information that violates Fair Consumer Practices as outlined in these rules;
  - (d) advertising, recruiting, or operating a group of classes or a program that has not been approved by the Commission;
  - (e) failure to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable at the authorized location of the institution;

- (f) failure to provide and maintain adequate faculty and/or staff;
  - (g) failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered;
  - (h) operating a postsecondary educational institution at a location that has not been authorized by the Commission;
  - (i) failure to correct findings or areas of non-compliance resulting from an authorization site visit, investigation, or audit;
  - (j) a pattern of coercion, threats, or intimidation by institutional personnel to students or other school personnel;
  - (k) failure to advise the Commission about significant factors, such as:
    1. financial difficulties affecting program consistent with the objectives of the course or program of study, 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;
  - (l) activities described in Rule .21 of these rules;
  - (m) failure to comply with the requirements of the tuition guaranty fund under § 49-7-2018 and the related rules;
  - (n) submitting false information in any application or correspondence related to an audit, investigation, or complaint; and
  - (o) retaliating against a complainant who exercise their right to complain.
- (2) Repeated and/or consistent violations of the Act or these rules, particularly in the same areas such as advertising, fair consumer practices or operational standards may be grounds for conditional or revocation of authorization in addition to fines.

- (3) Institutions that advertise in formats that will be in the public domain for long periods and where such advertising cannot be rewritten or retracted may be fined in accordance with the Act and these rules for each day, week, or month the advertisement is in active circulation.
- (4) Commission staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to Commission staff cannot be furnished, Commission staff may recommend to the Executive Director that the institution publish a retraction of such advertising claims in the same manner as the claims themselves. Continuation of such advertising shall constitute cause for further adverse action.
- (5) Any action by the Commission or Executive Director under this rule shall be subject to review as provided in T.C.A. § 49-7- 2012. All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act.

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

1540-01-02-.23 Institution Closure.

- (1) When an authorized postsecondary educational institution proposes to discontinue its activities or operation, including allowing authorization to expire, such institution shall notify Commission staff within seventy-two (72) hours of that decision.
- (2) Commission staff will provide the institution a list of items that must be provided to Commission staff to close the institution in good-standing and a due date by which to provide the items. The list may include, but is not limited to:
  - (a) anticipated date to terminate teaching activity;
  - (b) ending date of present term;
  - (c) a listing by name of all students in all programs. Such list shall include student's social security number, unique student identification number, address, phone number, program of enrollment, and estimated completion dates;
  - (d) the status of all current refunds due or the amount of unearned tuition paid by each student and for which the institution is obligated;
  - (e) a verified agreement with one or more local institutions able to provide sound education to all students in all programs;
  - (f) disposition and servicing of all academic records as required by T.C.A. §49-7-2016;
  - (g) a request for conditional authorization where required;
  - (h) updated statistical data;

- (i) official transcripts and certificates for all students enrolled at the institution since it was first authorized and any transcripts or certificates held by the institution that were awarded by another institution that had previously closed and deposited its records with the institution or that was purchased; and
  - (j) demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (3) An institution that ceases operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.
- (4) Should the institution fail to make arrangements satisfactory to the Commission staff 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. Unearned tuition is not the same as a refund calculation or return to Title IV calculation. Unearned tuition shall be calculated as provided for in Rule Chapter 1710-01-02.
- (5) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this rule may be deemed retroactively by the Executive Director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individuals directly involved, including, but not limited to, the director, owners, and/or the board chair.
- (6) Student Completion of Education (“Teachouts”):
- (a) The Executive Director may approve other authorized or exempt institutions to teachout students who were currently enrolled in an institution which ceases operation. An approved teachout institution shall:
    1. offer the course of study or similar course of study as those offered at the closed institution;
    2. be in the same geographic area as that in which the closed institution existed or provide necessary transportation expenses;
    3. provide the student the opportunity to complete the program at no cost in excess of that for which the student originally contracted at the closed institution;
    4. accept any and all credits earned at the closed institution; and
    5. not reduce total course hours required for the student to complete.
  - (b) If the closed or closing institution fails to provide an acceptable plan to the Executive Director, Commission staff may work toward effecting teachout

arrangements or transfer agreements with other authorized institutions.

- (c) Teachout plans may involve other institutions or be carried out by the terminating institution as circumstances may dictate.
- (7) As an alternative to the deposit of records with the Commission, the institution may propose a plan for permanent retention of the records for consideration by Commission staff.

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

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

- (1) Applications shall be filed electronically as prescribed in the application or using DPSA's electronic forms portal.
- (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) of these rules.

Authority: T.C.A. §§ 49-7-2005.

1540-01-02-.25 Fees.

- (1) All fees collected pursuant to the provisions of the Act shall be deposited in the state treasury as a special agency account to administer the provisions of the Act.
- (2) Annual fees shall be paid with the Reauthorization Application and Certification of Compliance as follows:
  - (a) Annual 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) Application or Certification Deadline Extension Fee .....\$500
  - (c) Late Application or Certification Fee .....\$500
- (3) The following fees apply to the filing of applications and other services:
  - (a) Initial Authorization Application..... \$3,000

- (b) Program Registration Request .....\$500
- (c) Authority for Unaccredited Institutions to Grant Degrees .....\$1,000  
(paid in addition to the Program Registration Request fee)
- (d) Credential Level Elevation for Authorized Institutions ..... \$2,000  
.....(paid in addition to the Program Registration Request fee)
- (e) Institution Name Change Application .....\$500
- (f) Change of Location Application .....\$500
- (g) Fines (assesses at a maximum of per day, per violation) .....\$500
- (h) Exemption Determination Request .....\$100
- (i) Closed Institution Transcript Request .....\$10
- (j) Convenience Charge for Electronic Payments ..... amount charged by vendor

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

1540-01-02-.26 Refund of Regulatory Fees.

- (1) At the request of an institution a refund will be made as follows:
  - (a) If an institution withdraws an application within three (3) business days from filing, then all fees assessed less the convenience charge for electronic payments shall be refunded. Thereafter all fees are nonrefundable.
  - (b) Institutions that fail to complete the application process described in Rule.07(1) of these rules shall forfeit all fees paid.
- (2) Fees for a Closed Institution Transcript Request and Convenience charges for electronic payments are nonrefundable.

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

## Amendment

### 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, .09, .18 and .23 shall be incorporated into this Rule Chapter as if fully written herein.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-10-.02 Definitions.

- (1) "Accreditation" is a non-governmental, peer evaluation of postsecondary educational institutions and programs by private educational associations that have adopted criteria for educational programs and have developed procedures for evaluating institutions or programs. The date of accreditation is the date applicable to a location and includes approval, recognition, or similar designation of a branch, satellite, instructional, or other location descriptor used by an accreditor. 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" means approval of a postsecondary educational institution by the Commission for the institution to engage in activities or operations otherwise prohibited by T.C.A. § 49-7-2007. Authorization is for a specified time at a specified location. Institutions shall not use authorization to connote greater approval than simple permission to engage in allowed activities or operations. Terms which may not be used include, but are not limited to, "accredited by," "supervised by," "endorsed by," and "recommended by the Commission."
- (5) "Commission" means the Tennessee Higher Education Commission.
- (6) "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.
- (7) "Enrollment" or "Enrolled" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.
- (8) "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.
- (9) "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
- (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 may be used for purposes of a postsecondary educational institution in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons at the address. When physical presence activities or operations are not the result of instruction at a postsecondary educational institution location as determined by the Commission staff, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location.
- (12) "Optional expedited authorization" or "OEA" means the alternative optional authorization available pursuant to T.C.A. § 49-7-2022 and these rules to certain accredited postsecondary educational 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) "Ownership" and "Owner" mean:
- (a) the individual, if the postsecondary educational institution is a sole proprietorship;
  - (b) all partners, whether full, silent, or limited, if the postsecondary educational institution is a partnership;
  - (c) all individuals and entities with an interest in the for-profit corporation or other for-profit legal entity, if the postsecondary educational institution is a for-profit corporation or other for-profit legal entity; or
  - (d) the executive committee of the governing board, if the postsecondary educational institution is a not-for-profit or nonprofit entity.
- (15) "Postsecondary educational institution" includes, but is not limited to, a school, college, university, or other type of entity offering educational credentials, instruction, educational services, or other activities as described in T.C.A. § 49-7-2007, primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for the attainment of educational, professional, or vocational objectives. The terms "location," "postsecondary educational institution," and "institution" may be used interchangeably such that determinations made pursuant to the Act and these rules are made in regard to the specific location.
- (16) "Primarily located" means the state recognized by the accreditor as the state in which the main campus is located;
- (17) "Prospective student" means a student who has been accepted for attendance at an institution but who is not enrolled as defined in subparagraph (7) of this rule.
- (18) "These rules" means all rules contained in Rule Chapter 1540-01-10.
- (19) "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 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-10-.03 Eligibility and Application Requirements.

- (1) In order to receive OEA, a postsecondary educational institution must submit a signed OEA Application demonstrating that the institution meets the following eligibility requirements:
- (a) Be accredited by an accrediting agency recognized by the U.S. Department of Education; and
  - (b) Provide the following information and documentation:

1. evidence of institutional accreditation from an institutional accrediting agency recognized by the U.S. Department of Education indicating that the location for which authorization is being sought is accredited or properly recognized by the accreditor;
2. documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of student complaints. In order to be a comprehensive complaint process, the process must contain:
  - (i) a detailed explanation as to how a student escalates a grievance to the highest level at the authorized location, for example, to the institutional director;
  - (ii) an opportunity for all persons involved in the complaint to be heard at any final step at the authorized 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 authorized location level may be filed with the Commission; and
  - (iv) an explanation as to how students will be notified of the institution's comprehensive complaint process;
3. documentation evidencing that the institution is authorized or exempt from authorization in the state where it is primarily located, if the institution is not authorized in Tennessee;
4. documentation, if deemed necessary, evidencing that the institution meets and maintains financial standards and institutional stability acceptable by the accreditor for the purpose of maintaining accreditation or the United States department of education for the purpose of being a Title IV eligible 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 addresses to the most current version of the following information. The address should provide a reasonable person easy access to this information;
- (i) Costs of attendance;
  - (ii) Information on whether academic credits attained are transferable to other institutions operating in Tennessee;
  - (iii) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee, if applicable; and
  - (iv) Federal student cohort default rates.
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 or tree showing the institution's position in relationship to all affiliated legal entities;
9. the most recently calculated three-year (3) official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education;

10. affirmation of the requirement to submit statistical data as described in Rule 1540-01-02-.18; and
  11. other than public institutions, a continuous institutional surety bond on the prescribed form.
- (c) OEA will be granted for four (4) years, unless otherwise determined by the Executive Director or the Commission. Institutions with a four (4) year authorization term shall submit Certifications of Compliance as provided for in these rules in years one (1), two (2), and three (3) and an OEA Application as provided for in these rules in year four (4).
- (d) Commission staff will review an OEA Application to determine whether the application demonstrates that the institution complies with all requisite standards. Upon such a finding and in the case of an initial application, Commission staff will recommend that the Executive Director grant the institution provisional initial authorization. ~~Provisional initial authorization shall list any limitations as to time, procedures, functions, or other conditions as deemed necessary and be subject to review and ratification by the Commission. After ratification, the provisional designation will be removed.~~
1. An award of provisional initial authorization shall be subject to review and ratification by the Commission.
  2. If an award of provisional initial authorization is ratified by the Commission, authorization becomes OEA.
  3. If an award of provisional initial authorization is not ratified by the Commission, the institution shall cease all activities and operations as directed by Commission staff in accordance with the Act and these rules.
  4. An institution awarded provisional initial authorization may engage in activities and operations; however, limitations as to time, procedures, functions, or other conditions may be imposed as deemed necessary. Such limitations may include, but not be limited to, notifying prospective students in the enrollment agreement, or similar document, that the institution:
    - i. is authorized provisionally subject to ratification by the Commission, and
    - ii. must refund all moneys paid by or on behalf of prospective or enrolled students in the event that the Commission does not ratify the award of provisional authorization thereby requiring the institution to cease activities or operations such that students are unable to begin or complete the program of enrollment.

- (e) In the event that an OEA Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall provide written notice of the deficiencies to the applicant and provide applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application may be denied or Commission staff will recommend that the Executive Director take adverse action, including but not limited to placing the institution on conditional authorization status, or revoking authorization.

(2) Certification of Compliance

- (a) Annually during the authorization term, institutions with optional expedited authorization shall file a Certification of Compliance by a due date to be established by Commission staff and posted on the Commission's website.
- (b) The Certification of Compliance shall require at a minimum that the institution self-certify that it is engaged in activities and operations in compliance with the Act and these rules, the institution provide an updated comprehensive program list, and the certification be signed by the institutional director and, if other than the institutional director, the owner or a representative thereof.
- (c) Commission staff will review a Certification of Compliance and, upon finding that the certification demonstrates that the institution complies with all requisite standards, notify the institution of such. In the event that the Certification of Compliance fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the Certification of Compliance by providing written notice of the deficiencies to the institution and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff may recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.

(3) Change of Ownership Application:

- (a) Authorization must be issued to the owner or governing body of the applicant institution and is nontransferable.
- (b) A change of ownership occurs when a transaction results in the controlling interest in the postsecondary educational institution changing from an authorized owner to an unauthorized owner. In the event of a change of ownership, the new owner must submit to Commission staff within five (5) 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 conditional authorization until the new owner obtains provisional initial authorization.

- (c) The new owner shall submit an Initial Authorization Application as provided for in Rule Chapter 1540-01-02 or an Optional Expedited Authorization Application thirty (30) calendar days after the notice of conditional authorization.
- (d) The Change of Ownership Application shall require that the new owner provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.
- (e) Commission staff will review a Change of Ownership Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant the change of ownership and recommend that the Executive Director grant conditional authorization. In the event that the Change of Ownership Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied and the closure process described in Rule .23(b) of these rules will commence.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

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;
  - (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;
  - (e) change of ownership; or
  - (f) change of institutional director.
- (2) Institutions shall submit a New Program Notification Form when the institution offers a new program. 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, 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 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.05 Denial or Withdrawal of an Application or Certification of Compliance.

- (1) When an application or certification is before Commission staff for consideration, Commission staff will provide the applicant written notice of its final determination. If, upon written notification of any action taken by Commission Staff, an aggrieved applicant desires a review by the Executive Director, the applicant shall notify the Executive Director within ten (10) business days of the date of the action of the Executive Director, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (2) If, upon written notification of any action taken by the Executive Director, an aggrieved applicant desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the applicant shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (3) Any person, agent, group or entity aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022 and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.06 Conditional Status of or Revocation of OEA Status.

- (1) OEA may be made conditional or revoked for just cause or as otherwise noted in T.C.A. § 49-7-2022. Revocation can occur as a result of:
  - (a) a vote of the Commission on its own motion 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 complaint.
  - (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;
  - (h) Retaliating against a complainant who exercises their right to complain; or
  - (i) Allowing OEA to expire without timely filing an OEA Application, Certification of Compliance, 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 thirty (30) calendar days after the notice 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 until the Commission determines that all bases for revocation have been resolved.
- (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.

- (5) Any action by the Commission or Executive Director under this rule shall be subject to review as provided in T.C.A. § 49-7-2012. All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-10-.07 Complaints.

- (1) Commission staff shall investigate any signed student complaint involving an OEA institution after verifying that the student has exhausted the institution complaint process.
- (2) Commission staff's investigation shall determine as necessary:
  - (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-.19(9). Such date shall be 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-.19(9);; 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 Commission as provided for in Rule 1540-01-02-.19(9).
    - (iii) Any party to the complaint aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.
- (g) Any request for review shall be in writing, signed, 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.

Authority: T.C.A. §§ 49-7-2005 , 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.08 Filing Methods and Requirements.

- (1) Due dates, denials, deferrals, and withdrawals:
  - (a) For purposes of these rules, application refers to any application or certification.
  - (b) When a due date is provided by Commission staff, a complete application in the prescribed format shall be received at the Commission by the close of business on the due date. Applications received after the due date will be deemed late and will be reviewed after all timely filed applications or certifications are reviewed. For purposes of these rules, applications refer to any applications or certifications.
  - (c) Initial OEA Applications shall be filed in the prescribed format and may be filed at any time. All other OEA Applications shall be filed as provided for in these rules.

Applications and certifications will be reviewed when complete. When received, Commission staff shall determine whether an application is complete and notify the applicant if the application is incomplete. An applicant will have thirty (30) calendar days to complete an incomplete application. Incomplete applications or certifications include applications or certifications submitted without all applicable fees or an attachment. An application that is not completed by the prescribed due date will be withdrawn.

- (d) Denial or withdrawal of an application does not prevent the applicant from submitting a new application.
- (2) Applications shall be filed electronically as prescribed in the application or using DPSA's electronic forms portal.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.09 Fees.

- (1) An institution shall pay a fee of nine thousand dollars (\$9,000) to the Commission when filing an Optional Expedited Authorization Application or Certification of Compliance. Any convenience charge for electronic payments shall equal the amount charged by the vendor.
- (2) If an institution withdraws an application within three (3) business days from receipt, then all fees assessed less the convenience charge for electronic payments shall be refunded. After three (3) business days from filing of the application, all fees are nonrefundable.
- (3) Institutions that fail to complete the application process described in Rule .08 of these rules shall forfeit all fees paid.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, and 2022 Tenn. Pub. Ch. No. 1044.

# PROPOSED RULEMAKING RULES – REDLINED VERSION

## Amendment

### CHAPTER 1540-01-02

## AUTHORIZATION AND REGULATION OF POSTSECONDARY EDUCATION 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 Higher Education Authorization Act of 2016, as amended, at Title 49, Chapter 7, Part 20 (the Act). Institutions and agents must comply with the current language of the Act and these rules.

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

1540-01-02-.02 Role of the Commission, Executive Director, ~~Committee~~, and Commission Staff.

- (1) Role of the Tennessee Higher Education Commission (THEC or Commission):
- (a) The Commission at each quarterly meeting shall consider recommendations from the ~~Committee on Postsecondary Educational Institutions and the Division of Postsecondary State Authorization~~ Executive Director and Commission staff regarding authorizations, ~~program approvals~~, and any other matter at the request of the Commission's Executive Director.
- (2) Role of the Tennessee Higher Education Commission Executive Director:
- (a) The Executive Director is empowered to take any urgent action in furtherance of the Act during the periods between Commission meetings, provided that:
1. the Executive Director gives written notice of such action to the affected party;
  2. the Executive Director notifies the affected party that they may notify the Commission within ten (10) business days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final; and
  3. at the same time the Executive Director gives written notice of the action to members of the Commission.
- (b) ~~The Executive Director is empowered to review decisions and recommendations of Commission staff as provided for in these rules. Whenever Commission staff cannot resolve a complaint or a dispute involving the Act or these rules, the Executive Director upon a written request from an aggrieved party that in the view of the Executive Director is justifiable will provide a review and/or hearing for parties involved prior to presentation of the unresolved complaint or dispute to the Commission.~~
- (c) On the advice of Commission staff, the Executive Director, in consultation with the Commission Chair, is authorized to waive these rules upon well documented extraordinary cause, where necessary to protect the public interest, and when consistent with the Act. A waiver shall not be effective for more than one (1) year from its effective date.

(d) The Executive Director may exempt ~~a~~an institution, program, or activity from authorization or from compliance with a specific rule if such an exemption can be demonstrated to be in the public interest. Such exemptions should be temporary and narrow in scope ~~and be subject to annual review.~~

(e) The Executive Director is empowered to act in the following matters, subject to a hearing and review by the Commission upon the request of the aggrieved party in the manner provided by T.C.A. § 49-7-~~2010~~2012(b):

1. assess fines under the Act and these rules; and
2. intervene to alter, place conditions on, ~~suspend,~~ or revoke, in full or in part, an institution's ~~or agent's~~ authorization or program registrations, ~~to operate; and~~
3. ~~issue temporary or conditional authorization.~~

~~(f) The Executive Director is empowered to grant provisional initial authorization to an institution seeking initial regular or optional expedited authorization subject to review and ratification by the Commission at a regularly scheduled meeting.~~

~~(g) The Executive Director is empowered to extend authorization time periods of institutions authorized as of July 1, 2022, in order to effectuate the purposes of the Act and these rules. At the Executive Director's direction, Commission staff shall post on the Commission's website notice of authorization extensions and future filing requirements and provide notification of the posting to institutions via email.~~

~~(3) Role of the Committee on Postsecondary Educational Institutions (Committee):~~

~~(a) The Committee shall meet quarterly or at the call of the Chairman of the Committee, at the call of a majority of the Committee members, or at the call of the Chairman of the Commission to serve as an advisory committee to the Commission.~~

~~(b) At meetings, the Committee may take any action delegated to it by the Commission pursuant to T.C.A. § 49-7-207, including, but not limited to, making recommendations on:~~

1. ~~applications for authorization;~~
2. ~~applications for program approvals;~~
3. ~~proposed rules; and~~
4. ~~consideration of such other matters relating to the Act at the request of the Executive Director.~~

~~(c) The Committee and, as needed, other experts appointed by the Executive Director, may participate in institution site visits for purposes of evaluating compliance with the Act and~~

~~these rules;~~

- ~~(d) The Committee shall exercise such other powers and undertake such other obligations as are delegated to it by the Commission under the provisions of the Act.~~
- ~~(e) The Chairman of the Committee may appoint subcommittees as needed.~~

(43) Role of the Commission staff:

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

Authority: T.C.A. §§ 49-7-2004, ~~and 49-7-2014,~~ and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.03 Definitions.

- (1) "Ability-to-benefit" or "ATB" as an adjective describes:
  - (a) a student who has not provided proof of receiving a high school diploma or



equivalency, but who has demonstrated by successfully passing an ability-to-benefit test that the student possesses the cognitive ~~or physical~~ skills needed to benefit from a course or certificate or diploma program; or

- (b) a test given by an authorized institution to determine whether a student possesses the cognitive ~~or physical~~ skills to benefit from a certificate or diploma program.
- (2) "Academic" as an adjective describing a degree means a degree that is organized primarily for academic or professional 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 Divinity, 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 postsecondary 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. The date of accreditation is the date applicable to a location and includes approval, recognition, or similar designation of a branch, satellite, instructional or other location descriptor used by an accreditor. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Department of Education.
- ~~(4)~~ "Activities and operations" mean to operate, to grant, to offer, and the prohibited actions described in 49-7-2007.
- (45) "Act" means the Tennessee Higher Education Authorization Act of 2016, T.C.A. §§ 49-7-2001, et seq., as amended.
- ~~(56)~~ "Adverse action" means action taken by the Executive Director or Commission to fine, limit, change, suspend, or cause to cease activity that is not compliant with the Act and these rules. Such adverse action includes fines of five hundred dollars (\$500) per violation per day, suspension of activity, conditional authorization or program registration, or revocation of authorization or ~~approval~~program registration.
- ~~(67)~~ "Agent" means any person representing a postsecondary educational institution for payment, who solicits in any form and enrolls, or seeks to enroll, a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution. Persons owning an interest in an institution and the institution's full-time employees and directors shall not be considered agents under this part~~the Act~~.
- ~~(7)~~ "Agent's permit" means a nontransferable written authorization issued to a 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 (1) institution will meet the admission education requirement for a program leading to a higher credential at a second institution.
- (9) "Associate's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours, ninety (90) quarter credit hours, or the equivalent.
- (10) "Authorization ~~to operate~~" means approval of ~~the Commission to operate or to contract to operate~~ a postsecondary educational institution by the Commission for the institution to engage in activities or operations otherwise prohibited by 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~~ engage in allowed activities or operations. Terms which may not be used include, but are not limited to, "accredited by," "supervised by," "endorsed by," and "recommended by the Commission."
- (11) "Authorization site visit" means visit to a location ~~an institutional site visit conducted~~ by Commission staff or ~~a Committee member other industry representatives or subject matter experts~~ to verify, review, inspect, or investigate as necessary to ensure a location or program is compliant with the Act and these rules.
- (12) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least one hundred and twenty (120) semester credit hours, one hundred and eighty (180) quarter hours, or the equivalent.
- (13) "Certificate program" generally means one (1) or more technical courses usually completed in one (1) to twenty-six (26) weeks, or up to and including five hundred (500) contact hours normally with a single skill objective. A program name or certificate credential should not include terms such as "certified," "registered," or "licensed" unless the postsecondary educational institution is recognized by a subject matter expert state or federal agency, board, or commission to award such a credential or recognized by a private company where the curriculum or product of the company is being taught, for example, Microsoft certifications.
- (14) "Clock Hour" has the same meaning as contact hour.
- (15) "Closed enrollment" means instruction provided to a group or business by a postsecondary educational institution, whereby public solicitation does not occur and the institution is given a list of enrollees to train at no cost to the students.
- (16) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary educational institution offering courses of study leading to a degree.

(17) "Commission" means the Tennessee Higher Education Commission.

~~(18) "Committee" means the Committee on Postsecondary Educational Institutions.~~

~~(1918)~~ "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) × 100.

~~(2019)~~ "Contact hour" means a sixty (60) minute period of time that contains at least fifty (50) minutes of actual directed or supervised instructional time.

~~(2120)~~ "Degree" means an educational credential from a postsecondary educational institution with the term associate, bachelor's, master's, 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.~~

~~(2321)~~ "Diploma program" means a program of instruction offering technical and some basic course work. General education courses may be included. Program requirements generally range from more than five hundred (500) contact hours to less than the requirements for an Associate degree.

~~(2422)~~ "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.

~~(2523)~~ "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.

~~(2624)~~ "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least ninety (90) semester hours of graduate credit, one hundred and thirty-five (135) quarter hours of graduate credit, or the equivalent.

~~(2725)~~ "Enrollment" or "Enrolled" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.

~~(2826)~~ "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.

- (2927) "Educational service" means any class, course or program of training, instruction or study.
- (3028) "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.
- (29) "Field Trip" means a congregation of students and instructors at a location in Tennessee for instruction in the subject of enrollment for not more than three (3) calendar days. Such field trips may not occur more than three (3) times a year in the same program.
- (3130) "General education courses" means a category of academic subjects that students are required to take prior to graduation outside of their major area of study or vocational concentration. These subjects are intended to broaden students' intellectual growth and cover topics including humanities, communication/language skills, social science, science, and quantitative and ethical reasoning.~~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.~~
- (3231) "Independent certified public accountant" means a certified public accountant not associated with the institution, its owners, or its affiliated businesses.
- (3332) "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 × 100.
- (3433) "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
- (3534) "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.
- (3635) "Location" means an address that may be used for purposes of a postsecondary educational institution in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons at the address is zoned for commercial purposes for use as a postsecondary educational institution. When physical presence activities or operations are not the result of instruction at a postsecondary educational institution location as determined by the Commission staff, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location.
- (3736) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, or the equivalent.

~~(38)~~ "Non-degree-granting postsecondary educational institution" includes all postsecondary educational institutions that do not meet the definition of a degree-granting postsecondary educational institution. Non-degree-granting postsecondary institutions are frequently referred to as "career," "vocational," or "technical" schools. Non-degree-granting postsecondary educational institutions are institutions offering programs designed primarily for job entry or upgrading of skills and usually measured in contact hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to affect outcomes.

~~(3937)~~ "Other fees" means fees, other than tuition, paid to the institution for housing, meals, or transportation or fees 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, or graduation fees. Other fees may include, at the institution's discretion, optional fees, including post-program completion testing fees, if collected by the institution on behalf of a student.~~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.~~

~~(4038)~~ "Out-of-state institution" means an authorized postsecondary educational institution that maintains its primary campus in another state, but has a physical presence in Tennessee.

~~(4139)~~ "Ownership" and "Owner" mean: ~~s 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.~~

~~(a) the individual, if the postsecondary educational institution is a sole proprietorship;~~

~~(b) all partners, whether full, silent, or limited, if the postsecondary educational institution is a partnership;~~

~~(c) all individuals and entities with an interest in the for-profit corporation or other for-profit legal entity, if the postsecondary educational institution is a for-profit corporation or other for-profit legal entity; or~~

~~(d) the executive committee of the governing board, if the postsecondary educational institution is a not-for-profit or nonprofit entity.~~

~~(4240)~~ "Physical presence" means presence within the state of Tennessee for the purpose of conducting activity related to a postsecondary educational institution as given in T.C.A. § 49-7-2007. Physical presence as further outlined for purposes of authorization shall include but not be limited to:

~~(a) operating an instructional site a location within the state;~~

- (b) offering instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors or computer resources, computer linking, or any form of electronic means;
- (c) granting an educational credential from a location within the state;
- (d) using an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; or
- (e) advertising, disseminating promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to be authorized by the Commission.

Physical presence does not include field trips, sanctioned sports recruiting activities, or college fairs or other assemblies of institutions in Tennessee. As to college fairs or assemblies and institution may not enroll an individual, allow an individual to sign any agreement obligating the person to the institution, accept any moneys from the individual, or follow-up with an individual by means of an in-person meeting in Tennessee.

(4341) "Placement rate" means the number placed as a percentage of the number placeable, that is, Placement Rate = Number Placed/Number Placeable × 100.

(4442) "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 ~~type of entity organization or person~~, offering educational credentials, ~~or offering instruction, or educational services, or other activities as described in T.C.A. § 49-7-2007,~~ primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for ~~the~~ attainment of educational, professional, or vocational objectives. The terms "campus," "location," "postsecondary educational institution," and "institution" may be used interchangeably such that determinations made pursuant to the Act and these rules are made in regard to the specific location.

(4143) "Primarily located" means:

- (a) if accredited, the state recognized by the accreditor as the state in which the main campus or similarly designated campus is located;
- (b) If unaccredited, the state where the main administrative or corporate office is located.

(4244) "Principal party" means an owner, executive board member, or institutional director.

(4345) "Prospective student" means a student who has been accepted for attendance at an institution but who is not enrolled as defined in subparagraph (25) of this rule.

- (4546) "Quarter" is a period of instruction into which the academic year is divided. A quarter must consist of at least ten (10) weeks.
- (464547) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction for one (1) quarter of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week, or the equivalent number of hours.
- (4748) "Refundable fees" means any fees charged by an institution to the student for a period of enrollment 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.
- (4849) "Residential course" means a course in which the student comes to an institution's authorized location as opposed to a course where the student and the instructor are in different locations.
- (4950) "Semester" is a period of instruction into which the academic year is divided. A semester must consist of at least fifteen (15) weeks.
- (5051) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction during one (1) semester of one (1) classroom lecture hour per week, two (2) hours of laboratory experience per week, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (5152) "Solicitation" means contact, written or verbal, on behalf of an institution for the purpose of supplying information in an attempt to enroll Tennessee residents.
- (5253) "Specialist Degree" means an advanced master's degree or post-master's degree with requirements less than those required for a doctoral degree.
- (5254) "Supervised field experiences" means a student learning experience comprised primarily of the practical application of previously studied theories and skills, under the oversight of a supervisor, mentor, faculty member or other qualified professional who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. The supervised field experience is part of a program of study offered by the enrolling institution. Examples include, but are not limited to, practica, student teaching, clinical placements, or internships.
- (5355) "These rules" means all rules contained in Rule Chapter 1540-01-02.
- (5456) "Time to completion" means the total number of days from a student's start date until the completion date.
- (5557) "Tuition" means any fee involving the student, actually charged or tracked as a bookkeeping item for instruction provided. Pursuant to Rule .15(4) of these rules, all tuition charges must clearly indicate the period of enrollment for which the student is being charged, for example, if the program is a four (4) month program but the tuition charged is for one (1) month, the

account statement might read "Tuition Charged for Month 1."

- (5658) "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.
- (5759) "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.
- (5860) "University" means a postsecondary educational institution that provides facilities for teaching and research, offers academic undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs.
- (5961) "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.
- (6062) "Withdrawal rate" means the number of withdrawals minus the number of withdrawals due to special circumstances as a percentage of program enrollment, that is,  $\text{Withdrawal Rate} = (\text{Number of Withdrawals} - \text{Special Circumstance Withdrawals}) / \text{Program Enrollment} \times 100$ .

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

#### 1540-01-02-.04 Determination for Required Authorization.

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

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2005, 49-7-2006, 49-7-2011, 49-7-2022, and 49-7-2023, and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-02-.05 Exemptions.

- (1) T.C.A. § 49-7-2004 of the Act includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general



exemption descriptions of T.C.A. § 49-7-2004.

- (a) Subject to subparagraph (b) of this rule, education that is:
1. ~~maintained or given by or on behalf of an employer or group of employers on a no-fee basis to employees or to persons they anticipate employing; maintained or given by an employer or group of employers, for employees or for persons they anticipate employing at no cost to the individual;~~
  2. ~~maintained or given by a labor organization recognized by either the U.S. Department of Labor or the state (1) to its membership or apprentices or (2) on a no-fee basis to the individual; maintained or given by a U.S. Department of Labor or state recognized labor organization (1) to its membership or apprentices or (2) at no cost to the individual;~~
  3. financed and/or subsidized by public funds, at no cost to the individual, and having a closed enrollment;
  4. given under a contract agreement, having a closed enrollment, ~~on a no-fee basis~~ ~~at no cost~~ to the individual, and ~~does not offer~~ ~~not offering~~ educational credentials that in the opinion of 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~~ ~~on a no-fee basis~~ 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, ~~and T.C.A. § 49-7-2004(a)(2), any tuition charges, other fee charges,~~ 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 a fee~~ 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 registration~~ 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 registration~~ 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 of instruction previously received by students that are designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams shall be considered exempt from authorization-registration 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-registration requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and refrain from any misleading representations. Such misleading representations include:
    - 1. suggesting in any way that the training results in receipt of an educational credential, such as a degree;
    - 2. listing anticipated salary amounts; and
    - 3. suggesting that the entity is accredited.
  - (g) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers directly related to a sale of equipment or services are exempt from the provisions of authorization.
  - (h) Businesses offering short-term computer courses in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of Commission staff the courses are offered concurrently toward a vocational goal.
- (2) Any institution or program that qualifies as exempt under the Act and these rules is exempt from authorization or registration without a determination of the Commission. However, institutions can request that Commission staff issue a written determination of exemption as provided for in Rule .07 of these rules for the institution as a whole or for any program. Commission staff can revoke or amend an exemption determination if the basis for the exemption changes or no longer exists.
- ~~(3) Except as provided in paragraph (4) of this rule, to request a determination of exemption, institutions shall submit an Exemption Application along with a descriptive narrative explaining how the institution or program qualifies for an exemption. The application shall require a citation to the exemption provision relied on in the Act and these rules and documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers. Upon receipt of an Exemption Application, Commission staff shall make a written determination and, if denied, provide a date by which an aggrieved institution may submit a request for further review by the~~

~~Executive Director. Such date shall not be earlier than ten (10) business days after the date of the written determination.~~

- ~~(4) Institutions that are exempt pursuant to T.C.A. § 49-7-2004(a)(6) shall submit the Information Request Form in order to obtain a determination of exemption.~~
- ~~(5) If the institution is aggrieved by a determination concerning exemption status, the institution may seek review as provided for in Rule .02(2)(b) of these rules. Any request for review shall be in writing, signed, list each instance where Commission staff erred, and provide a detailed explanation of each alleged error with references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in paragraph (3) of this rule.~~

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

1540-01-02-.06 Minimum Standards for Authorization.

- (1) Institutions authorized to operate or seeking authorization ~~to operate~~ in Tennessee must meet the minimum standards for authorization stated in the Act and these rules. Commission staff shall verify that an institution meets minimum standards for authorization through review of applications, registration requests, and certifications, including, but not limited to, Initial Authorization Applications, New Program Applications, Program Revision Notification, School Personnel Applications, and Reauthorization Applications.
- (2) No out-of-state institution will be considered for authorization if it is not authorized or exempt from authorization in the state where it is primarily located.
- (3) In relation to the size and scope of the institution, it shall furnish adequate student services and resources to fulfill the mission and claims of the institution. Such services must have staff available to students with the knowledge and skills in areas such as: academic standing and satisfactory progress, admissions, employment opportunities or placement, intern/externships, library, and financial aid.
- (4) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective operation of the institution such that the institution is able to comply with and, as applicable, coordinate federal, state and accreditation requirements in a positive and educationally enriching environment to the benefit of students. Indicators of a breakdown-lack 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, instances where a principal party has been or is involved with a postsecondary educational institution that ceased or ceases operation resulting in a loss of time or money for enrollees or prospective students or that had or has its institutional authorization to operate in a state revoked, or multiple findings in several different areas.
- (5) Institution Name:

- (a) An institution's name may not duplicate another institution name or mislead potential students in violation of fair consumer practices or suggest guaranteed employment, completion, or other outcomes.
- (b) An institution may not use the word "university" in its name unless the institution meets the definition of university in these rules ~~and is accredited, and has been so approved by a regional accrediting body so recognized by the U.S. Department of Education.~~
- (c) An institution may use the word "college" in its name without a qualifier if the institution:
  1. meets the definition of college as set forth in the Act and 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 institution meets the definition of college as provided for in the Act and these rules and the name contains an appropriate qualifier, such as career, vocational, or Bible. For institutions authorized after October 1, 2016, the qualifier shall precede the word college.

(6) In the event that an institution seeks authorization and Commission staff is aware of an outstanding complaint against the institution, the institution must resolve the complaint to the satisfaction of Commission staff before an Initial Authorization Application will be reviewed.

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, Requests, and Certifications of Compliance.

- (1) Application d~~Due dates, denials, and deferrals~~withdrawals, and review:
  - (a) ~~For purposes of these rules, application refers to any application, request, or certification. 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.~~
  - (b) When a due date is provided by Commission staff, a complete application in the prescribed format~~Applications~~ shall be received at the Commission ~~on by the close of business on~~ the due date. Applications received after ~~that the due~~ the due date will be

deemed late, will be reviewed after all timely filed applications are reviewed, and may be subject to a late fee and may be deferred to the next due date.

- (c) Initial Authorization Applications and Program Registration Requests shall be filed in the prescribed format and may be filed at any time. All other applications shall be filed as provided for in these rules. Applications will be reviewed when complete.
- (bd) When received, Commission staff shall determine whether an application is complete and notify the applicant if the application is incomplete. An applicant will have thirty (30) calendar days to complete an incomplete application. Incomplete applications include applications submitted without all applicable fees or in a format other than the prescribed format and applications missing a required attachment. 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. An application that is not completed by the prescribed due date will be deemed withdrawn.
- (ce) Denial or withdrawal of an application does not prevent the applicant from submitting a new application. 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.
- (cf) When an application is before Commission staff for consideration, Commission staff will provide the applicant written notice of its final determination. If, upon written notification of any action taken by Commission Staff, an aggrieved applicant desires a review by the Executive Director, the applicant shall notify the Executive Director within ten (10) business days of the date of the action of the Commission staff, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner. If an application is deferred, the institution shall have until the next established due date to complete the application.
- (cg) If, upon written notification of any action taken by the Executive Director, an aggrieved applicant desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the applicant shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner. 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.

(h) Any person, agent, group or entity aggrieved or adversely affected by any final Commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.

(2) Initial Authorization Application:

(a) Institutions must demonstrate through the Initial Authorization Application that the institution meets minimum standards for authorization as provided for in the Act and these rules. The application shall require at a minimum:

1. a name of the institution that complies with the Act and Rule .06(5) of these rules;
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 or tree showing the institution's position in relationship to all affiliated corporate-legal entities;
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 consistent with the objectives of the course or program of study of good quality;
5. evidence demonstrating that the location meets the definition of location as provided for in these rules 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;
6. qualifications for instructional staff and supervisors administrative personnel;
7. designation of and contact information for an institutional director for each location and an affirmation from the director that he or she the director will conduct the institution in accordance with the Act and these rules;
8. a description of any administrative structure above the institutional director with the signature of the official that will notify the Commission if the director is replaced;
9. a continuous institutional surety bond;
10. a copy of the enrollment agreement the institution will use following receipt of authorization;

11. a copy of the pre-enrollment checklist the institution will use following receipt of authorization;
12. a copy of the institutional catalog the institution will use following receipt of authorization;
13. a copy of the student transfer of credit disclosure statement required by T.C.A. § 49-7-144 the institution will use following receipt of authorization;
14. any specific requirements as outlined under 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;
16. if participating in Title IV federal student financial aid programs, the institution must meet financial standards and institutional stability deemed acceptable for eligibility in Title IV federal student financial aid programs and provide the following:
  - (i) the institution's Office of Postsecondary Education Identification (OPEID) number;
  - ~~(ii) the most recently calculated three (3)-year official cohort default rate from the Office of Federal Student Aid of the U.S. Department of Education; and~~
  - ~~(iii) documentation from Federal Student Aid Office of the U.S. Department of Education listing the institution's federal financial composite score as described in 34 C.F.R. § 668.172; and 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~~
  - ~~(iii)~~ 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;

17. provide financial statements as follows:

(i) as to institutions that are not currently operating a location,

- (I) a year-to-date balance sheet prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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~~ ninety (90) calendar days and
- (II) pro forma income statements prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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(~~65~~)(e) of these rules; or

(ii) as to institutions that are operating a location,

- (I) current financial statement prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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) calendar days and
- (II) pro forma income statements prepared by a certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers 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(~~65~~)(e) of these rules and financial statements of all owners; and

18. such other information, ~~or~~ clarification, or training deemed necessary by Commission staff.

- (b) A separate application for authorization must be made for each location located outside of reasonable walking distance from a previously authorized location. Commission staff may make reasonable exceptions for narrow purpose, highly



structured programs at multiple locations where administrative requirements are limited and precise.

- (c) Initial Authorization may be granted for up to four (4) years, unless otherwise determined by the Executive Director or the Commission. Institutions with a four (4) year initial authorization term shall submit Certifications of Compliance as provided for in these rules in years one (1), two (2), and three (3) and a Reauthorization Application as provided for in these rules in year four (4).
- (d) Commission staff will review an Initial Authorization Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, recommend that the Executive Director grant the institution provisional initial authorization as further explained at Rule .21 of these rules. Provisional initial authorization shall list any limitations as to time, procedures, functions, or other conditions as deemed necessary and be subject to review and ratification by the Commission.
- (e) The Commission is not required to authorize an institution, if, in its judgment:
  - 1. the institution is noncompliant with the Act or these rules;
  - 2. adequate provisions for the institution or its programs exist within the proposed service area;
  - 3. if there is insufficient evidence that adequate employment opportunities exist in the related occupations for persons successfully completing the institution's programs; or
  - 4. if the costs of a program are unreasonable in relation to the reasonably expected earnings in occupations for which the program is designed.
- (f) In the event that the Initial Authorization Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.

(3) Reauthorization Application:

- (a) Effective January 1, 2018, institutions with regular, temporary, or conditional authorization shall file a reauthorization application by the a due date to be established by Commission staff and posted on the Commission's website. 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) ~~The Reauthorization Application constitutes a self-study through which Institutions 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~~ may 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 as described at Rule .14(4) of these rules; 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. affirmation of the requirement to submit statistical data as described in Rule .27-18 of these rules; and
  8. such other information or clarification deemed necessary by Commission staff.

~~(c) Commission staff will review a Reauthorization Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant reauthorization for four (4) years, unless a shorter term is determined to be appropriate by the Executive Director or Commission. In the event that the Reauthorization Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.~~

(4) Change of Ownership Application:

- (a) ~~Authorization must be issued to the owner or governing body of the applicant institution and is nontransferable. 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) A change of ownership occurs when a transaction results in the controlling interest in the postsecondary educational institution changing from an authorized owner to an unauthorized owner. 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-five (105)~~ 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 provisional initial~~ authorization.
- ~~(d) No later than thirty (30) calendar days after the grant of conditional authorization, The the new owner or governing body shall submit an Initial Authorization Application and related applications or an Optional Expedited Authorization Application as provided for in Rule Chapter 1540-01-10, by the first quarterly filing due date after filing the Change of Ownership Application.~~
- ~~(e) The Change of Ownership Application shall require that the new owner or governing body provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.~~
- ~~(e) Commission staff will review a Change of Ownership Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant the change of ownership and recommend that the Executive Director grant conditional authorization. In the event that the Change of Ownership Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied and the closure process described in Rule .23(b) of these rules will commence.~~
- (5) ~~New Program Application and Program Revision Notification~~ Program Registration Request:
- (a) In order to offer a program, an institution must submit a ~~New Program Application Registration Request~~ either along with an Initial Authorization Application or, for previously authorized institutions, as a stand-alone application. Program ~~approval registration by the Commission~~ is required prior to offering the program, which includes enrolling, advertising, recruiting or soliciting. ~~Program Registration Requests shall be filed in the prescribed format and may be filed at any time. Applications must be received by the quarterly due date established by Commission staff.~~

- (b) The ~~New Program Application Registration Requests shall~~ may 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 a~~ credential that is defined in Rule .03, such as certificate, diploma or bachelor's degree that awarded which conforms to the requirement that no institution may offer ~~instruction leading to~~ an academic degree program unless the institution is ~~accredited~~ 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;~~
  65. a job title and the associated Classification of Institutional Programs (CIP) code applicable to the job title;
  76. the most currently available entry level salary or wage data and job outlook projections for those CIP codes from a Tennessee or federal website;
  87. admission criteria confirmation and, if necessary, an explanation;
  98. 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 which the institution has an executed agreement; ~~with a copy of an affiliation agreement with each site;~~
  - ~~15.~~ ~~if applicable, the~~ The maximum pupil to teacher ratio for each course that does not exceed the below acceptable ratios. ~~Acceptable ratios, without special permission from the Commission, are as follows:~~
    - ~~(i)~~ lecture: 40-1;
    - ~~(ii)~~ allied health ~~and nursing~~ labs or clinicals with no subject matter agency oversight: 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 and;
    - (ii) an explanation as to how educational goals and overall program goals are achievable through distance learning; and
    - ~~(iii)~~ ~~an explanation as to how graduates of the program will exhibit skills and knowledge equivalent to similar residential programs; and~~
  - ~~17.~~ such other information or clarification deemed necessary by Commission staff.
- (c) An institution revises a program when it changes any element of a program that has been approved by registered with the Commission ~~or Commission staff~~, for example, the name of the program, tuition, credit or contact hours, mandatory other fees, length, or delivery mode ~~and curriculum~~, or when it changes the status of the

program, for example, inactivates or discontinues the program. Institutions may revise programs as follows:

2. When an institution revises ~~an approved~~ a registered program, by more than twenty-five percent (25%) in the last twelve (12) months or by changing the program delivery mode, name, or credential, then the institution must reregister the program by submitting a Program Registration Request seek approval from Commission staff by submitting a Program Revision Notification at least thirty (30) days~~thirty (30) calendar days~~ prior to implementing the revision. When calculating twenty-five percent (25%) in the last twelve (12) months, all revisions made to quantifiable program elements in the last twelve (12) months should be totaled. For example, if in the last twelve (12) months, the institution raises tuition by five percent (5%) and adds ten percent (10%) to the program length, then the institution has revised the program by a total of fifteen percent (15%). If within twelve (12) months of these revisions, the institution raises other fees by fifteen percent (15%), then the total of the revisions in the last twelve (12) months is now thirty percent (30%) and the institution must reregister the program by submitting a Program Registration Request.~~If the program revision amounts to change of more than twenty-five percent (25%) in the last twelve (12) months or if Commission staff determines a significant revision has occurred, then the institution must submit a New Program Application prior to implementing the revision.~~

2. In all other instances, an institution may revise a program at its discretion and report the revisions to Commission staff when completing the annual Reauthorization Application or Certification of Compliance.

(d) Institutions shall not arbitrarily add a course, contact hours, or credit hours to an existing program in which a student would incur additional time or expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to:

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

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

(e) Commission staff will review a Program Registration Request and, upon finding that the registration demonstrates that the institution complies with all requisite standards, register the program by including it or revising it in the postsecondary program inventory. In the event that the Program Registration Request fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the registration by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the program registration will be denied.

(6) Change of Location Application:

(a) Absent extraordinary circumstances, an authorized institution shall submit a Change of Location Application ~~thirty (30) days~~thirty (30) calendar days prior to moving and receive Commission Staff approval prior to operation. An example of an extraordinary circumstance is the unexpected loss of a lease. In the event of extraordinary circumstances, the institution shall submit a Change of Location Application and receive Commission Staff approval prior to providing instruction to students.

(b) The Change of Location Application shall include at a minimum:

1. 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;~~
2. evidence demonstrating that the location meets the definition of location as provided for in these rules ~~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;
3. 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 zoning and the safety and health of all persons upon the premises; and
4. such other information or clarification deemed necessary by Commission staff.

(c) Commission staff will review a Change of Location Application and conduct an authorization site visit, if Commission staff determines an authorization site visit is necessary. Upon finding that the application and an authorization site visit, if necessary, demonstrate that the institution complies with all requisite standards, Commission staff will grant the change of location. In the event that the Change of Location Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written

~~notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization. Commission staff shall approve the application after it determines that the application is complete and conducts a successful site visit.~~

- (d) If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.

(7) School Personnel Application:

- (a) Authorized Institutions must ~~provide and~~ maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. ~~Following initial authorization, an institution must notify Commission staff when there is a change of institutional director, including the appointment of an interim institutional director, by submitting a School Personnel Application no later than five (5) business days after the hire or appointment date. 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.

- ~~(c) Commission staff will review a School Personnel Application and, upon finding that the qualifications of the institutional director meet all requisite standards, approve the application. In the event that the School Personnel Application fails to demonstrate that the qualifications of institutional director meet all requisite standards, Commission staff shall defer the application by providing written notice of~~



the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.

~~(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~~thirty (30) calendar 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. affirmation that the institution following approval and prior to using the new name will update the pre-enrollment checklist, enrollment agreement, transfer of credit disclosure statement, and catalog; and an updated copy of the pre-enrollment checklist, enrollment agreement, and catalog; and
5. such other information or clarification deemed necessary by Commission staff.

(c) Commission staff will review Institution Name Change Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, Commission staff will grant the change of name. In the event that the Institution Name Change Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied.

(9) Certification of Compliance

- (a) Annually during the authorization term, institutions with regular or conditional authorization shall file a Certification of Compliance by a due date to be established by Commission staff and posted on the Commission's website.
- (b) The Certification of Compliance shall require at a minimum that the institution self-certify that it is engaged in activities and operations in compliance with the Act and these rules, the institution provide an updated comprehensive program list, and the certification must be signed by the institutional director and, if other than the institutional director, the owner, or a representative thereof. For institutions that do not receive Title IV funds, the Certification of Compliance may require financial statements as described at Rule .14(4) of these rules.
- (c) Commission staff will review a Certification of Compliance and, upon finding that the certification demonstrates that the institution complies with all requisite standards, notify the institution of such. In the event that the Certification of Compliance fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the Certification of Compliance by providing written notice of the deficiencies to the institution and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff will recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.

(10) Exemption Determination Request

- (a) The Exemption Determination Request may include at a minimum:

- (1) full contact information for the requestor;
  - (2) the statutory or rule citation justifying exemption;
  - (3) an argument applying the statutory or rule citation to operations of the requestor;
  - (4) documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; or organizational ties and/or contracts with other educational providers; and
  - (5) such other information or clarification deemed necessary by Commission staff.
- (b) Commission staff will review an Exemption Determination Request and, upon finding that the exemption as requested is justified by statute or rule, notify the institution of such. In the event that Commission staff requires additional information, Commission staff shall defer the Exemption Determination Request by requesting such information and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the Exemption Determination Request will be denied.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008, ~~and~~ 49-7-2013, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.08 Regulations for Specific Institutions and Programs.

- (1) Degree Granting Institutions:
  - (a) Authorization to offer any degree in the state will require either institutional accreditation by a U.S. Department of Education recognized accreditor or authority to grant degrees by affirmative vote of the Commission.
  - (b) Unaccredited institutions seeking authority to grant degrees must meet, in addition to the requirements in the Act and these rules for initial authorization, at a minimum:
    1. the institution shall incorporate instructional procedures, texts, and materials appropriate to the purpose, curriculum and standards of other degree granting postsecondary educational institutions offering similar programs in the state;
    2. for undergraduate and degree granting programs and except as noted further in subparagraph (c) of this rule, twenty-five percent (25%) of the total program must be in general education courses and should be indicated separately in the curriculum presented;

3. library resources and holdings shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
  4. demonstration that the degree and the program ~~has~~ have merit and value academically, professionally, or vocationally in Tennessee; and
  5. master's and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical, and interpretive thinking, use of primary documents or resources, and independent research skills.
- (c) Undergraduate degree programs must include at least twenty-five percent (25%) of the program in general education courses unless the institution can demonstrate program accreditation requirements which are lesser or for an unaccredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that twenty-five percent (25%) of the program for job skills courses.
  - (d) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student-to-student and student-to-staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.
- (2) Unaccredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the course or program.
  - (3) Bartending institutions:
    - (a) Pursuant to T.C.A. § 49-7-115, all schools involved in training in the areas of management, operation, procedures, or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.
  - (4) Programs leading to licensure, certification, registration or similar recognition:
    - (a) ~~Students shall not be required to take Successful completion of~~ an examination given by a private or public third-party ~~cannot be as~~ part of an institution's program ~~or be a completion requirement~~. For example, a truck driving program cannot include successful completion of the Commercial Driver's License examination.

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

(7) Institutions that require students to complete cleaning or similar tasks as part of any course or program shall limit such tasks to those that are reasonably related to the field for which the student is being prepared and that are consistent with the types of tasks that the student would be expected to complete as part of the student's primary duties or functions when working in the field that the education is preparing the student to enter.

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

1540-01-02-.09 Bonds.

- (1) Institutions, other than public 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.~~

- (32) Institutions must provide a bond for each authorized location.
- (43) 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.
- (4) Commission staff shall provide the institution at least thirty (30) calendar days written notice that authorization shall be made conditional, subject to revocation, by operation of law when the institution is no longer covered by a surety bond. Absent exceptional circumstances, a postsecondary educational institution shall not continue to engage in activities or operations without a surety bond for more than ninety (90) calendar days.

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

1540-01-02-.10 Audits.

- (1) Commission staff may conduct audits to ensure compliance with the Act and these rules. Audits may be performed at the ~~institution's~~ authorized location or by requesting that the institution forward copies of student records to Commission staff. In the case of the latter, the provided records will be retained by Commission staff as working papers but will be destroyed when the audit is closed.
- (2) Commission staff may audit an authorized institution at any time without notice to the institution. However, unless the circumstances mandate that no notice can or should be given, Commission staff should provide at least seventy-two (72) hours' notice. Notice shall be given by email to the institutional director.
- (3) Failure to comply with any audit request may be an audit finding, and Commission staff may recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization~~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, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.
- (5) Tuition increases that in the opinion of the Commission are excessive, unreasonable or exceed initial disclosure to students may result in an in-depth audit of the institution's financial stability.

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

- (1) Each institution must publish a catalog that includes at a minimum:
  - (a) the full and correct 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 credential requirements for faculty ~~with credentials for position~~;
  - (e) the institutional calendar, including holidays, application and registration enrollment periods and the beginning and ending dates of terms, courses, or programs;
  - (f) the institutional enrollment admission procedures and entrance requirements, including late ~~enrollment admission~~, if permitted;
  - (g) the institutional attendance policy, including minimum attendance requirements, how attendance will be determined, the withdrawal policy, the circumstances under which a student will be interrupted for unsatisfactory attendance, and the conditions under which a student may be readmitted;
  - (h) the institutional policy covering satisfactory progress, including an explanation of any grading system used, a description of any probation policy, and a description of the institutional system for making progress reports to students;
  - (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;
  - (j) a description of each program offered including objectives, costs, length, program components, ~~and or~~ course requirements, including, if applicable, cleaning or similar tasks as described in Rule .08(7), or in the case of correspondence instruction, the number of lessons; Institutions that require students to complete cleaning or similar tasks as part of any program curriculum shall describe such tasks and explain how the tasks are reasonably related to the field for which the student is being prepared and are consistent with the types of tasks that the student would be expected to complete as part of the student's primary duties or functions when working in the field that the education is preparing the student to enter;
  - (k) a description of student services provided, including whether the placement assistance is available and, if none, so state;
  - (l) a description of the facilities and equipment used for educational programs;

- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy, including the procedure for determining the last date of attendance and official date of termination, the time within which a refund will be provided, ~~and how a refund must be requested~~;
- (o) a statement provided within the first four pages of the catalog which reads as follows: "The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization ~~must be renewed each year and~~ is based on an evaluation of minimum standards concerning quality the provision of education, ethical business practices, and fiscal responsibility";
- (p) a description of the student grievance procedure, including:
1. the title, address, and telephone number of the institutional employee designated to receive student complaints;
  2. the timeframe for the institution's investigation of the complaint, the steps of the investigation and the timeframe and method for communicating the written decision to the student if applicable, the process for escalating or appealing a complaint;
  3. if the institution allows for nonbinding mediation or voluntary arbitration, the catalog must describe the process in its entirety; and
  4. the address and telephone number of Commission staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 1520-1540-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization after exhausting the grievance process at the institution."
- (q) a disclosure regarding the- ability to transfer credit earned to another institution, with language sufficient to describe limitations on the transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:
- ~~"(name of institution) is a special purpose institution. That purpose is (institution's mission statement).~~ 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, in accordance with Rule .12(3) of these rules; and along with the admissions policies.
- (2) Institutions may provide electronic catalogs to students as long as the institution provides the student a hard-copy upon the student's request.
  - (3) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;
  - (4) Catalogs should be written at a level that allows prospective students and enrollees to comprehend the information and make informed decisions.

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

1540-01-02-.12 Admissions Standards.

- (1) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written.
- (2) An institution should not enroll a student in a program leading to licensure when the institution knows or, by the exercise of reasonable care, should know the student is or will be ineligible to obtain licensure in the occupation for which the student is being trained. For example, an institution should not admit a student if the institution knows the student has a prior legal conviction that will prevent the student from obtaining licensure. If a student who is ineligible or likely to be ineligible for licensure desires to enroll in such a program, regardless of license eligibility, the institution may admit the student after the student submits a signed, written statement acknowledging the student is or is likely to be ineligible for licensure. The institution shall provide the student a copy of the statement and maintain the original in the student's file.
- (3) Basis of admission shall be at a minimum:
  - (a) Students enrolling in a certificate or diploma program must possess a high school diploma, a high school diploma equivalency, 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's degree program must possess, at a minimum, a high school diploma, a high school diploma equivalency, or postsecondary credit in a degree program.
  - (c) Students enrolling in a post-baccalaureate program must possess, at a minimum, a baccalaureate degree from an institution judged to be appropriate by the Commission.

- (d) A student may be admitted as an ATB student if the student has terminated secondary enrollment and is beyond the age of compulsory attendance. An institution may use ~~either~~ a standardized test formerly or currently recognized by the U.S. Department of Education or an ATB approved by Commission staff prior to January 1, 2023, ~~if such a test is not applicable to the particular subject matter of the program, a test developed by the institution. In either case, the~~ The institution shall request approval from Commission staff before using the test and shall state the 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. The following applies to all ability-to-benefit tests:
1. Tests shall be administered in a secure environment, for example, monitors present.
  2. Tests shall not be administered in a manner that is inconsistent with the recommendations of the standardized test developers.
  3. An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
- (4) Proof of the basis of admission shall be maintained in the student file in accordance with Rule .15 of these rules.

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

#### 1540-01-02-.13 Enrollment Checklists, Agreements, and Disclosures.

- (1) Pre-Enrollment Checklist: Prior to signing an enrollment agreement, institutions shall require an institution representative and the prospective student to sign and date a pre-enrollment checklist using a form provided in the Initial Authorization Application. 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 virtually or in-person (not applicable to institutions that deliver all instruction through distance learning);
  - (b) received an institution catalog and all addendums and attachments referenced therein. If the catalog and addendums/attachments are ~~and if~~ provided electronically understands that the student may request a hard-copy of the catalog and the documents at any time;
  - (c) was given the time and opportunity to review the institutional policies in the catalog;
  - (d) knows the length of the program for full-time and part-time students in academic

terms and actual calendar time;

- (e) has been informed of the total tuition and other fees of the program;
- (f) has been informed of the estimated cost of books and any required equipment purchases such as a computer, specialized tools, or art supplies;
- (g) has been given a copy of the institution refund policy;
- (h) has executed a Transfer of Credit Disclosure Statement in compliance with T.C.A. § 49-7-144 and understands the specific limitations- should the institution have articulation agreements;
- (i) has been given the address and telephone number of Commission staff along with a statement that reads: "Any person claiming damage or loss as a result of any act or practice by this institution that is may be a violation of the Title 49, Chapter 7, Part 20 or Rule Chapter 15201540-01-02 may file a complaint with the Tennessee Higher Education Commission, Division of Postsecondary State Authorization after exhausting the grievance process at the institution."; and
- (j) has received the most recent withdrawal, completion, and placement data as calculated by the Commission by including in the checklist:

1. For institutions previously authorized by THEC and under new ownership:

(i) \_\_\_\_\_ 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/bureaus/student-aid-and-compliance/postsecondary-state-authorization.html> \_\_\_\_\_/topic/authorized-institutions-data." or;

~~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.(ii)~~ (ii) a copy of the institution's most recent Annual Performance Report created by Commission staff and posted on the Commission's website.

2. \_\_\_\_\_ For institutions that are currently authorized by THEC but zero students were enrolled in the program the previous fiscal year, the following statement: "Understands that withdrawal, completion, and placement information is not

currently available because the program has had zero students enrolled in the previous fiscal year. This information will be provided by THEC approximately one year after the institution reports enrollment for this program."

3. For institutions that are offering a new program or institutions that are not currently authorized by THEC, the following statement: "Understands that this is a new program and placement, completion and withdrawal information will be provided by THEC approximately one year after the institution begins offering the program."; and

(k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).

(2) Enrollment Agreement: Institutions enrolling an individual in a course or program shall require an institution representative and the prospective student to sign and date an enrollment agreement prior to the student attending one (1) session of class, turning in one (1) assignment, or receiving one (1) distance learning lesson, whichever occurs first. The document must clearly indicate that it is the enrollment agreement (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:

1. the full and correct name and address of the authorized location of the institution;
2. the name, address, and social security number or unique student identification number of the student;
3. the date training is to begin and program length;
4. if students have the option to attend part-time, full-time or part-time status of the student;
5. the projected date of completion;
6. the program name as approved by the Commission;
7. the total cost of the program, including itemized costs for tuition and ~~the approximate costs for~~ other fees, as defined in Rule .03(35) of these rules, along with an indication of which fees are optional and which fees are program related or post-completion related, for example, third-party testing fees;
8. cancellation and refund policy;

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

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

1540-01-02-.14 Financial Standards.

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

- (2) The institution shall maintain financial and business practices in-line with common business procedures utilizing standard accounting practices.
- (3) The institution shall maintain and be prepared to demonstrate at any time financial resources adequate to fund and maintain the following:
  - (a) facility maintenance and overhead;
  - (b) staff and faculty payroll;
  - (c) books, supplies or equipment utilized by students; and
  - (d) general operating costs.
- (4) ~~As part of reauthorization, authorized institutions must file financial statements for the most recently completed fiscal year as follows:~~ When financial statements are required by the Reauthorization Application or the Certification of Compliance, such statements shall be completed for the fiscal year that ended prior to one hundred-twenty (120) calendar days of the application due date and shall be prepared in the following format and manner:
  - (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, including an income statement, balance sheet, statement of cash flow, and notes, 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 a an independent certified public accountant or a bookkeeper certified by the National Association of Certified Public Bookkeepers.
  - (d) As an alternative to subparagraphs (5)(a) through (c) of this rule, institutions owned by the same parent company may submit an audited consolidated corporate financial statement. The audited consolidated statement shall be prepared in accordance with the Generally Accepted Accounting Principles by an independent certified public accountant. Commission staff, ~~the Committee,~~ or the Commission may request additional campus or institution-specific information where needed to better understand the financial stability of a single authorized location or to protect the public interest.

- (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.
  - (c) Related parties must be disclosed, including, but not limited to, related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.
  - (d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis.
  - (e) Within three (3) years from initially receiving authorization, neither the ratio of total revenues to total expenditures nor the ratio of current assets to current liabilities of either the authorized location or the parent company, where applicable, shall be less than 1:1 without convincing explanation.
  - (f) An Institution shall elect during reauthorization whether it will rely on the financial statements of the authorized location or the parent company and must use the financial statements of the elected entity for at least three (3) consecutive years.
- (6) When there are questions about the institution's financial stability, the Commission staff 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.
- (7) All institutions must maintain a business account with a financial institution that is federally insured in said institution's name.

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

1540-01-02-.15 Institution and Student Records.

- (1) Institutional directors must maintain on-site a current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, and financial reports, ~~and agent permit documentation~~.
- (2) Institutions shall retain for three (3) years a record of student complaints that follow the institution grievance process, including a copy of the complaint, any investigatory documents, and a statement of the matter's disposition.
- (3) Student financial records must be maintained and open for inspection and copying by

Commission staff in accordance with applicable confidentiality laws.

- (4) For each student, the institution must maintain an up-to-date reconciled account statement as a separate document. The statement must clearly reflect:
  - (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 ~~indicate~~ the period of enrollment for which the student is being charged, for example, if the tuition charge is for five hundred (500) contact hours of instruction, the account statement might read "Tuition Charged for 500 Contact Hours" or if the tuition charge is for one (1) semester of instruction, the account statement might read "Tuition Charged for Spring 2022 Semester." ~~program is a four (4) month program but the tuition charged is for one (1) month, the account statement might read "Tuition Charged for Month 1."~~
- (5) Institutions must maintain a file for each prospective student or student enrolled in a program or course for three (3) years after the student's withdrawal from or completion of the program or course of enrollment. The file shall contain at a minimum:
  - (a) the executed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and Rule .13(3) of these rules;
  - (b) documentation evidencing the student's basis for admission as provided for in paragraph (6) of this rule;
  - (c) the executed pre-enrollment checklist;
  - (d) the executed enrollment agreement;
  - (e) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress; ~~and~~
  - (f) written records of the previous training and education of the applicant student which clearly indicates the appropriate credit which has been given by the institution for previous training and education-; and
  - (g) an up-to-date reconciled account statement.
- (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, HiSET, 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.
- (7) Official documentation is a statement of the student's academic record received directly from the issuing institution or agency such as a transcript or score sheet. Paper transcripts printed on security sensitive paper that contains the issuing institution's seal or signature of an official from the institution is acceptable admission documentation. Electronic transcripts or scores sheets not printed on security sensitive paper must include indicia that the transcript or score sheet was received directly from the issuing institution or agency such as accompanying email correspondence or the envelope.
- (8) Institutions must offer a transcript for all programs other than programs registered as certificate programs. For a certificate program, an institution must provide a certificate to completers of the program and may offer a transcript to all enrolled students. In any event, all transcripts and certificates shall meet the requirements of this rule. Institutions shall maintain for the life of the institution a transcript or a certificate for each student previously or currently enrolled in a program offered by the institution. Institutions may only use certificates with well-defined short-term programs, such as bartending and truck driving,

~~where there is no separation of courses by subject content.~~ Institutions offering programs where a subject matter expert agency requires that the institution maintain a transcript must do so.

(a) Transcripts and certificates for each student enrolled in a program or course offered by the institution shall be maintained for the life of the institution and provided to DPSA upon closure as provided for in Rule .23 of these rules.

(ab) Transcripts shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The transcript shall include at a minimum the:

1. ~~full and correct~~complete name and address of the authorized location of the institution;
2. ~~first and last name of the student~~full name of student;
3. last four digits of the student's social security number;
4. program name as registered with the Commission~~as approved by the Commission~~;
5. status of student, for example, active, withdrawn, probation, leave of absence, or graduate;
6. official date recorded for all student withdrawals and graduations;
7. beginning date or academic term with the year for each course attempted;
8. as applicable to the type of institution, credit or contact hours attempted and earned;
9. name of each course and, if any, the course number as listed in the institution catalog along with the corresponding grade received;
10. indication of credits given by transfer from another institution or credit by exam;
11. cumulative Grade Point Average (GPA);
12. date the transcript was last updated and/or printed; and
13. signature of an institution official.

(b) Certificates shall be in a form that permits easy and accurate review by the student, transfer institutions, potential employers, and other state or federal agencies. The certificate shall include at a minimum the:

1. complete name and address of the institution;
  2. first and last full name of student;
  3. program name as registered with the Commissioner ~~department of enrollment~~;
  4. a certificate award date; and
  5. the signature of an institution official.
- (9) In lieu of hard copies of transcripts and certificates, an institution may maintain transcripts and certificates by electronic storage provided that the institution has a process for maintaining an up-to-date backup of the information in a separate system or at a different location. Commission staff must have complete and easy access to review student transcripts and certificates during authorization site visits and audits such that the institution can print any requested records upon request.

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

1540-01-02-.16 Personnel and Instructor Qualifications.

- (1) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training, such as official transcripts, for each personnel and instructors must be maintained on-site at the authorized location. Institutions must submit a copy of provide this evidence at any time upon receiving a request from Commission staff.
- (2) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities. The process for selection of administrative personnel and instructors shall ensure that administrative personnel and instructors meet the qualifications in this rule. Additionally, institutions shall take reasonable actions to ensure that a supervisor of any experiential learning, regardless of whether the learning is conducted at the location or in the field, is qualified to supervise the learning. For example, the supervisor must hold an appropriate license if the subject is a vocation requiring licensure.
- (3) Administrative personnel at an authorized institution must be graduates of an accredited college or university or have sufficient background and training in the administrator's area of responsibility. If the institution employs a director of education, that director shall possess a post-baccalaureate degree or the highest educational credential offered by the institution, whichever is higher. 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 are not included as

administrative personnel.

(4) Institutional Directors:

- (a) Each institution must designate one (1)-person as the institutional director. The institutional director is responsible for ensuring that the conduct of the institution and its agents is in compliance with the Act and these rules. The institutional director shall serve as the official contact for all correspondence and business conducted between the institution and the Commission, ~~the Committee~~, or Commission staff.
- (b) Institutional owners ~~or the controlling board~~ must ensure that each authorized location has an institutional director at the authorized location for at least fifty percent (50%) of the operational time each week the school has students present unless other provisions have been approved by Commission staff.
- (c) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these rules including, but not limited to, advertising, records, contracts, required benchmarks, annual due dates, and fee payments.
- (d) The institutional director at an authorized institution must:
  - 1. be a graduate of an accredited ~~postsecondary educational institution~~ 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 education shall equal at least five (5) years.

(5) Instructors:

- (a) Instructional staff for all institutions must be selected at a minimum on the basis of these rules.
- (b) Instructors in a trade related or specific skill area must have documented proficiency and practical applied experience in that trade or skill.
- (c) An instructor must hold the appropriate license if the subject is a vocation requiring licensure.
- (d) An instructor must be qualified by education and experience/background and must meet at a minimum the following qualifications:
  - 1. Doctorate level courses:
    - (i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:

- (I) a doctorate degree with a major or concentration in the subject area to be taught; or
- (II) a doctorate not in the subject area but with a minimum of one (1) year of practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours of doctoral level courses in the subject.

2. Master's level courses:

- (i) Hold a master's or higher degree from a college or university judged to be appropriate by the Commission and either:
  - (I) a master's or higher degree with a major or concentration in the subject area to be taught; or
  - (II) a master's or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in graduate level courses in the subject.

3. Baccalaureate level courses:

- (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
  - (I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or
  - (II) a baccalaureate or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

4. Associate level courses:

- (i) Meet the minimum requirements for doctorate, master's or baccalaureate level; or
- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:

- (I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or
- (II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.

5. Diploma and certificate level courses or programs:

- (i) Meet the minimum requirements for doctorate, master's 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 or licensure in the field 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 minimum, earned master's degrees.

(6) The Executive Director may approve a variance from the specific qualifications in paragraph (5) of this rule with sufficient justification and an assurance that the program quality will not be lessened. In such a situation, the institutional director must submit written justification and documentation ~~with using~~ the School Personnel Application submission within five (5) business days of the personnel hire date. In addition, the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to Commission staff upon request.

(7) Instructors shall be evaluated annually in writing by students and annually in writing by the institutional director or chief academic/instructional officer. The institution shall maintain such evaluations for six (6) years from the date of the evaluation. ~~Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.~~

(8) Agents:

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

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

1540-01-02-.17 Cancellation and Refund Policy.

- (2) All authorized institutions must comply with the laws of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws are revised.
- ~~(3) — Each authorized institution shall have a fair and equitable refund policy which governs the~~

~~repayment of institution charges assessed a student when:~~

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

~~the student withdraws, drops out, is expelled from the institution, or otherwise fails to complete the period of enrollment for which he or she was charged.~~

~~(32)~~ An authorized institution may use the following refund policies:

(a) the ~~default~~ refund policy contained in paragraph ~~(43)~~ of this rule;

(b) an institution policy, as provided for in paragraph (3) of this rule except the institution may increase the percentage listed in paragraph (3)(c) to more than 20% 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)~~ as applicable, a refund policy mandated by an accreditor or as a condition for students of the institution to participate in a governmental student assistance program, such as Veterans Benefits.

~~(43)~~ The ~~default~~ refund policy is as follows:

~~(a) — A student who at any time withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend class 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.~~

~~(b) — In addition to subparagraph (4)(a) of this rule, if a student fails to begin class on the program start date as written in the enrollment agreement or as amended by the institution, the refund shall equal the sum of all refundable fees paid and, if the student has institutional loans, forgiveness of the amounts owed by the student, less an administrative fee of one hundred dollars (\$100.00).~~

~~(c) — In addition to subparagraph (4)(a) of this rule, if after the program has commenced and before expiration of twenty percent (20%) or less of the period of enrollment for which the student was charged, a student withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend classes, the refund shall be a pro rata portion of refundable fees, less an administrative fee of one hundred dollars (\$100.00). If applicable, the refund shall include forgiveness of institutional loans. For example, if a student's last day of attendance equals ten percent (10%) of the period of enrollment for which the student was charged, the institution is entitled to retain only ten percent (10%) of the refundable fees charged for the period of enrollment as well as one hundred dollars (\$100.00). However, in no instance will the institution be responsible for any refund in excess of the amount paid by or on behalf of the student for the period of enrollment for which the student was charged.~~



- ~~(d) Except as provided in subparagraph (4)(a) of this rule, if after expiration of twenty percent (20%) of the period of enrollment for which the student was charged, a student withdraws, is withdrawn (including expulsion) by the institution, or otherwise fails to attend classes, the student may be deemed obligated for one hundred percent (100%) of the refundable fees charged by the institution up to the last period of enrollment charged.~~
- ~~(e) For a student who cannot complete one (1) or more classes because the institution discontinued such a class during a period of enrollment for which the student was charged, the institution shall refund the sum of all refundable fees paid and, if the student has institutional loans, forgive the amounts owed by the student.~~  
~~(a) — If a student withdraws from the institution on or before the first day of classes, or fails to begin classes, the refund shall equal the sum of all refundable fees paid and, if the student has institutional loans, forgiveness of the amounts owed by the student for the period of enrollment for which the student was charged, less an administrative fee of one hundred dollars (\$100.00);~~
- ~~(b) A student who withdraws at any time is entitled to a full refund of any fee, regardless of whether the fee is included in tuition, paid to the institution for tangible goods or services not delivered to or fully provided to the student;~~
- ~~(c) In addition to subparagraph (4)(b) of this rule, if after classes have commenced and before expiration of ten percent (10%) of the period of enrollment for which the student was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal seventy-five percent (75%) of all refundable fees paid and, if the student has institutional loans, forgiveness of the loan amount in excess of the twenty-five percent (25%) the student owes the institution, less administrative fee of one hundred dollars (\$100.00);~~
- ~~(d) In addition to subparagraph (4)(b) of this rule, if after expiration of ten percent (10%) of the period of enrollment for which the student was charged, and before expiration of twenty-five percent (25%) of the period, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal twenty-five percent (25%) of all refundable fees paid and, if the student has institutional loans, forgiveness of the loan amount in excess of the seventy-five percent (75%) the student owes the institution, less administrative fee of one hundred dollars (\$100.00); or~~
- ~~(e) In addition to subparagraph (4)(b) of this rule, if after expiration of twenty-five percent (25%) of the period of enrollment for which the student was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the student may be deemed obligated for one hundred percent (100%) of the tuition and other fees charged by the institution.~~
- ~~(f) For a student who cannot complete one or more classes because the institution discontinued such a class during a period of enrollment for which the student~~

~~was charged, the institution shall refund the sum of all refundable fees paid and, if the student has institutional loans, forgive the amounts owed by the student.~~

- (54) For purposes of calculating percentages of attendance in clock hour programs the number of scheduled hours up to the last date of attendance will be the numerator. For credit hour programs, percentages are calculated based on calendar days.
- (5) ~~When computing refunds pursuant to the default refund policy, the last day of attendance for a student who meets the definition of enrolled shall be one (1) of the following either:~~
- (a) ~~the date of the student's last recorded day of attendance or on the expulsion notice if a student is expelled from the institution;~~
  - (b) ~~When applicable, the date the institution receives a written notice of withdrawal from a student;~~
  - (c) ~~when no written notice of withdrawal is given, the institution shall use the last day of attendance as the date of withdrawal; or~~
  - (d) ~~the date the student fails/failed to return from an approved leave of absence.~~
- (6) Pursuant to Rule .15(4) of these rules, the reconciled account statement must indicate the period of enrollment for which the student is being charged for each tuition charge. If the institution does not maintain the requisite account statement or the reconciled account statement does not clearly indicate the period of enrollment for which the student is being charged, the institution shall be liable for all refundable fees paid by or on behalf of the student.
- (7) In any event, the last date of attendance will be determined and any refund due disbursed within forty-five (45) calendar days of the last date of attendance.

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

1540-01-02-.18 Statistical Data Collections.

- (1) Annually by October 15 or the next business day if October 15 is a state holiday or weekend day. All 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 instructional value and administrative capability~~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 Executive Director ~~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-.19 Fair Consumer Practices and Complaints.

- (1) All institutions and their administrative personnel, instructors, agents, and other staff shall act in accordance with fair consumer practices. Fair consumer practices means honesty, fairness, and disclosure to students in areas including, but not limited to, class schedules, recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, and competitors.
- (a) Institutions shall ensure that nothing is hidden and all verbal and written representations by the institution are accurate.
- (b) Fair consumer practices require an institution to apply its policies as written. The student shall be subject to the written policies in place at the time of the student's initial enrollment into the applicable program. Any changes to the written policies that occur during the student's period of enrollment shall only be applied to the student if the student signs and dates a document acknowledging the new policy and agreeing that said policy shall be applied to the student.
- (c) As applicable, verbal and written representations must reasonably allow enrolled or prospective students to make informed decisions concerning their investment of time or money and provide information needed to understand, evaluate, and comply with institution policies and program requirements.~~(1) All institutions and their representatives shall act in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the institution are accurate, such that students can make informed decisions concerning their investment of time or money.~~
- (2) ~~Fair consumer practices means honesty, fairness, and disclosure to students in areas including, but not limited to, recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, job placement~~

~~rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, and competitors. Fair consumer practices require an institution to apply its policies as written.~~

- (32) Students ~~should~~ have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.
- (43) Institutions may not use mandatory arbitration provisions.
- (54) Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure, or discrepancies between verbal and written information, intimidation, or coercion may require corrective public announcements in addition to adverse action as set forth in Rule .22 of these rules.
- (65) An institution must report to Commission staff in writing within ~~thirty (30) days~~ thirty (30) calendar days any unresolved written complaint filed in a Tennessee court about the institution of which the institution is knowledgeable.
- (76) 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.
- (87) 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.
- (98) Any person claiming damage or loss as a result of any act or practice by an authorized postsecondary educational institution or its agent that is a violation of the Act or these rules, may file a verified complaint on forms provided by the Commission. Any student who files a complaint or on behalf of whom a complaint is filed must first exhaust the grievance process at the institution. Parties to the complaint shall be the complainant and any named institution or agent thereof. 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 ~~.27-24~~ of these rules.
- (b) ~~Any complaint as described in (a) shall be commenced within three (3) years of the subject student's withdrawal from or completion of the program or course of enrollment. 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~~resolution.
- (f) ~~When resolution is not reached and if, based on all the evidence obtained through the investigation, Commission staff finds that any person, agent, group, or entity is, is about to, or has been violating the Act or these rules:~~
  - 1. ~~Commission staff may recommend that the Executive Director take action as provided for in T.C.A. § 49-7-2010 and § 49-7-2017 and these rules. Parties to the complaint shall be provided an opportunity to show cause why such recommendations should not be forwarded to the Executive Director. Such opportunity shall detail the basis for the findings and provide any party ten (10) business days to respond. 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.~~
  - 2. ~~(g)——The Executive Director shall act on a recommendation from Commission staff after the time for the show cause response has expired by providing a Notice of Decision to the parties to the complaint. Such notice shall explain the right to a hearing and review by the Commission as provided in T.C.A. § 49-7-2012. Any request for review shall be filed with the Commission within ten (10) business days of the date of the Notice of Decision, otherwise the action of the Executive Director shall be deemed final and no further review available. 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 is subparagraph (8)(f) of this rule.~~

- (g) When resolution of the complaint is not reached and if, based on all the evidence obtained through the investigation, Commission staff makes no findings or determines that an adverse action recommendation is not justified:
1. Commission staff shall provide the parties to the complaint notice of the lack of findings or determination.
  2. If, upon written notification of any action taken by Commission Staff, an aggrieved party to a complaint desires a review by the Executive Director, the party shall notify the Executive Director within ten (10) business days of the date of the action of Commission staff, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
  3. If, upon written notification of any action taken by the Executive Director, an aggrieved party to the complaint desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the party shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.
- (h) Any party to the complaint aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.
- (i) A complaint investigation may be placed on hold or closed if litigation or investigation involving similar issues is on-going at any court or other government agency.

- (109) Notwithstanding the provisions of paragraph (98) 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~~ 49-7-2011, and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-02-.20 Representations, Advertising, and Solicitations.

- (1) Institutions may reference having authorization in advertising, promotional material, and on letterhead ~~stationary-stationery~~ using the following language: "(name of institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must appear with the same size and type of font used throughout the statement, be used, have the same size font, and type of print.

- (2) Entities or individuals that own an authorized institution as well as a related business, for example, truck driver training and trucking company, must maintain clear separation in function and advertising of the business and the institution.
- (3) The Commission logo may not be used by an institution.
- (4) Institutions authorized by the Commission that have a website on, advertise through, or offer instruction via the internet must state on the institution's home page or Tennessee specific webpage: "[name of institution] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission." The entire statement must be used, have the same size font, and type of print. The reference to the "Tennessee Higher Education Commission" must be a hyperlink to [www.tn.gov/thec](http://www.tn.gov/thec).
- (5) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and is an accreditor recognized by the U.S. Department of Education.
- (6) No statement shall be made that the institution or its courses of instruction have been approved by a state or the federal government unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.
- (7) All advertisements seeking prospective students must include and clearly indicate the full and correct name of the institution, the authorized location city, and, if out-of-state, the authorized location state.
- (8) Any promotion of the institution must primarily be based on the institution's educational programs, not student aid promotion or the number of jobs available, must not guarantee employment, and must comply with fair consumer practices as described in Rule .19 of these rules.
- (9) Other than entry level salary data available on a Tennessee or federal government website, no dollar amount will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by Commission staff.
- (10) Institutions shall not use images of any kind in such a manner as to convey a false impression as to the location's size, importance, ~~or location of the institution, its~~ equipment, or ~~its~~ facilities.
- (11) Institutions or representatives shall not make deceptive statements concerning other institutions when attempting to enroll students.
- (12) Other than referencing the most recent rates calculated by Commission staff, no institution shall use job placement percentages or related statistics except by written permission of Commission staff.



- (13) If ~~tuition~~ loans are available at the institution, the school may advertise them only with the language "student ~~tuition~~ loans available" in type no larger than that used for the name of the ~~school~~ institution. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.
- (14) Promotional materials or agent solicitation practices must not state or infer that programs are available on a free tuition basis unless the tuition and other fee amount reported to Commission staff is zero (0).
- (15) No statement shall be made by an institution that the programs or courses are transferable to another institution without a current articulation agreement or transfer of credit agreement.
- (16) Claims must not be vague. For example, "award winning" institution should include the full name of the award in advertisement; specify year of any such attainment, and the source of the award.
- (17) No institution may publicize, promote or imply an accreditation that is not recognized by the U.S. Department of Education.
- (18) If an institution represents that it has an educational certification from any entity, other than those given by other Tennessee agencies, the institution must produce at the request of Commission staff proof of such certification.

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

1540-01-02-.21 Authorization Status.

~~(1) — Temporary Authorization:~~

~~(a) — Commission staff will recommend temporary authorization to the Committee after determining that the institution has demonstrated through the Initial Authorization Application and a site visit that it is compliant with the Act and these rules.~~

~~(b) — An institution will receive temporary authorization after favorable Commission action.~~

~~(c) — Temporary authorization must be maintained for at least twenty-four (24) months prior to eligibility for regular authorization.~~

~~(1) — Provisional Initial Authorization~~

~~(a) — An award of provisional initial authorization shall be subject to review and ratification by the Commission.~~

~~(b) — If an award of provisional initial authorization is ratified by the Commission, authorization becomes regular or conditional as determined by the Commission.~~

~~(c) — If an award of provisional initial authorization is not ratified by the Commission, the institution shall cease all activities and operations as directed by Commission staff in~~

accordance with the Act and these rules.

(d) An institution awarded provisional initial authorization may engage in activities and operations; however, limitations as to time, procedures, functions, or other conditions may be imposed as deemed necessary. Such limitations may include, but not be limited to, notifying prospective students in the enrollment agreement that the institution:

1. is authorized provisionally subject to ratification by the Commission, and

2. notwithstanding Rule .17 of these rules, must refund all moneys paid by or on behalf of prospective or enrolled students in the event that the Commission does not ratify the award of provisional authorization thereby requiring the institution to cease activities or operations such that students are unable to begin or complete the program of enrollment.

(2) Regular Authorization:

(a) Provisional authorization shall become regular authorization following review and ratification of the Commission ~~staff shall recommend for regular authorization any institution authorized for more than twenty-four (24) months that demonstrates all minimum standards for authorization through the Reauthorization Application.~~

(3) Conditional Authorization or Registration:

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

(b) An institution may request conditional authorization, including, but not limited to, suspension of the operation, rather than expose the institution to adverse action, for situations such as unexpected loss of lease, extended inactivity, or reorganization.

(c) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.

(4) Revocation of Authorization or Program Registration:

- (a) Revocation of authorization or program registration is the immediate and complete withdrawal of the institution's authorization or program registration to enroll, advertise, or operate a postsecondary educational institution in the state.
- (b) Possible grounds for immediate revocation of authorization or program registration to operate include but are not ~~be~~ limited to:
1. loss of right to use the authorized location without immediate notification to the Commission;
  2. instances where a principal party ~~or owner~~ has been or is involved with a postsecondary educational institution that ceased or ceases operation resulting in a loss of time or money for enrollees or prospective students, 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;
  4. failure to correct any situation that resulted in conditional authorization or program registration within a reasonable time period to be determined by the Executive Director;
  5. disregard for any specific directive issued by the Commission, the Executive Director, or Commission staff;
  6. failure to pay assessed fines; ~~and~~
  7. closing an institution without proper notification to the Commission or failure to complete all required closure obligations; and
  8. failure to submit a Certification of Compliance by the required due date or a Reauthorization Application by the authorization term expiration.
- (c) Revocation of authorization or program registration shall not relieve an institution of complete compliance with the requirements in these rules applicable to an institution closing, including, but not limited to, refunds to students, arranging instructional teachouts, and securing the disposition of student records.

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

1540-01-02-.22 Causes for Adverse Action.

- (1) The Commission or Executive Director in the interest of the public welfare, consumer protection and statutory responsibility may assess fines of five hundred dollars (\$500) per day per violation or revoke or make conditional the authorization of an institution or its program registrations or approval of an agent permit under the process as given in

subparagraph .02(2)(e) of these rules for reasons including, but not limited to:

- (a) disregard of provisions of the Act and/or these rules;
- (b) willful violation of any commitment made in an application for authorization or reauthorization;
- (c) presenting to the general public or students or prospective students information that violates Fair Consumer Practices as outlined in these rules;
- (d) advertising, recruiting, or operating a group of classes or a program that has not been approved by the Commission;
- (e) failure to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable at the authorized location of the institution;
- (f) failure to provide and maintain adequate faculty and/or staff;
- (g) failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered;
- (h) operating a postsecondary educational institution at a location that has not been authorized by the Commission;
- (i) failure to correct findings or areas of non-compliance resulting from ~~a~~an authorization site visit, investigation, or audit;
- (j) a pattern of coercion, threats, or intimidation by institutional personnel to students or other school personnel;
- (k) failure to advise the Commission about significant factors, such as:
  - 1. financial difficulties affecting program consistent with the objectives of the course or program of study ~~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;
  - (m) failure to comply with the requirements of the tuition guaranty fund under § 49-7-2018 and the related rules;
  - (n) submitting false information in any application or correspondence related to an audit, investigation, or complaint; and
  - (o) retaliating against a complainant who exercise their right to complain.
- (2) Repeated and/or consistent violations of the Act or these rules, particularly in the same areas such as advertising, fair consumer practices or operational standards may be grounds for conditional or revocation of authorization in addition to fines.
- (3) Institutions that advertise in formats that will be in the public domain for long periods and where such advertising cannot be rewritten or retracted may be fined in accordance with the Act and these rules for each day, week, or month the advertisement is in active circulation.
- (4) Commission staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to Commission staff cannot be furnished, Commission staff may recommend to the Executive Director that the institution publish a retraction of such advertising claims in the same manner as the claims themselves. Continuation of such advertising shall constitute cause for further adverse action.
- (5) Any action by the Commission or Executive Director under this rule shall be ~~in conformance with~~ subject to review as provided in T.C.A. § 49-7- 2010~~(c)~~12. All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act.

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

#### 1540-01-02-.23 Institution Closure.

- (1) When an authorized postsecondary educational institution proposes to discontinue its activities or operation, including allowing authorization to expire, such institution shall notify Commission staff within seventy-two (72) hours of that decision.
- (2) Commission staff will provide the institution a list of items that must be provided to Commission staff to close the institution in good-standing and a due date by which to provide the items. The list may include, but is not limited to:

- (a) anticipated date to terminate teaching activity;
  - (b) ending date of present term;
  - (c) a listing by name of all students in all programs. Such list shall include student's social security number, unique student identification number, address, phone number, program of enrollment, and estimated completion dates;
  - (d) the status of all current refunds due or the amount of unearned tuition paid by each student and for which the ~~school~~institution is obligated;
  - (e) a verified agreement with one or more local institutions able to provide ~~sound~~ education to all students in all programs;
  - (f) disposition and servicing of all ~~student academic~~ records as required by T.C.A. §49-7-2016;
  - (g) a request for conditional authorization ~~to operate~~ where required;
  - (h) updated statistical data;
  - (i) official transcripts and certificates for all students enrolled at the institution since it was first authorized and any transcripts or certificates held by the institution that were awarded by another institution that had previously closed and deposited its records with the institution or that was purchased; and
  - (j) demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (3) An institution that ceases operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.
- (4) Should the institution fail to make arrangements satisfactory to the Commission staff ~~Executive Director~~ for the completion of the programs in which the currently enrolled students are enrolled and/or for the reimbursement of unearned tuition and fees, the institution shall be subject to fines. Unearned tuition is not the same as a refund calculation or return to Title IV calculation. Unearned tuition shall be calculated as provided for in Rule Chapter 1710-01-02.
- (5) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this rule may be deemed retroactively by the Executive Director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individuals directly involved, including, but not limited to, the director, owners, and/or the board chair.

(6) Student Completion of Education (“Teachouts”):

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

~~(7) As an alternative to the deposit of records with the Commission, the institution may propose a plan for permanent retention of the records for consideration by Commission staff.~~

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

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

- (1) ~~Applications shall be filed electronically as prescribed in the application or using DPSA's electronic forms portal. 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) of these rules.
- ~~(3) Filings shall be received at DPSA on the due date. Items postmarked on the due date but not received at DPSA will be deemed late-filed and, if applicable, may be deferred pursuant to Rule 07(1)(a).~~

Authority: T.C.A. §§ 49-7-2005.

1540-01-02-.25 Fees.

- (1) All fees collected pursuant to the provisions of ~~this part~~the Act shall be deposited in the state treasury as a special agency account to administer the provisions of ~~this part~~the Act.
- (2) Annual ~~reauthorization~~ fees shall be paid with the Reauthorization Application and Certification of Compliance 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 Application or Certification Deadline~~ Extension Fee .....\$500
  - (c) Late ~~Reauthorization Application or Certification~~ Fee .....\$500
- (3) The following fees apply to the filing of applications and other services:
  - (a) Initial Authorization Application ..... \$3,000
  - (b) ~~New Programs Application~~Program Registration Request .....\$500
  - (c) Authority for Unaccredited Institutions to Grant Degrees .....\$1,000  
(paid in addition to the ~~New Program Application~~Program Registration Request fee)
  - (d) Credential Level Elevation for Authorized Institutions ..... \$2,000  
(paid in addition to the Program Registration Request~~New Program Application~~ fee)
  - ~~(e) Agent Permit Application – Initial .....\$500~~
  - ~~(f) Agent Permit Application – Renewal .....\$250~~
  - ~~(g)~~ Institution Name Change Application .....\$500
  - ~~(h)~~ Change of Location Application .....\$500
  - ~~(i)~~ Fines (assesses at a maximum of per day, per violation) .....\$500



- (jh) Exemption Determination ~~Application Request~~ .....\$100
- (ki) Closed Institution Transcript Request .....\$10
- (lj) Convenience Charge for Electronic Payments ..... amount charged by vendor

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

1540-01-02-.26 Refund of Regulatory Fees.

- (1) At the request of an institution a refund will be made as follows:
  - (a) ~~If an institution withdraws an application within three (3) business days from filing, then all fees assessed less the convenience charge for electronic payments shall be refunded. Thereafter all fees are nonrefundable. 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.~~
  - (~~db~~) Institutions that fail to complete the application process described in Rule ~~1540-01-02-.07(1)(b)~~ of these rules shall forfeit all fees paid.
  - (~~e2~~) Fees for a Closed Institution Transcript Request and Convenience charges for electronic payments are nonrefundable. 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.

## Amendment

### 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, .09, .18 and .26-23 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~~, and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-10-.02 Definitions.

- (1) "Accreditation" is a non-governmental, peer evaluation of postsecondary educational institutions and programs. ~~P 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. The date of accreditation is the date applicable to a location and includes approval, recognition, or similar designation of a branch, satellite, instructional, or other location descriptor used by an accreditor. 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" means approval of a postsecondary educational institution by the Commission for the institution to engage in activities or operations otherwise prohibited by T.C.A. § 49-7-2007. Authorization is for a specified time at a specified location. Institutions shall not use authorization to connote greater approval than simple permission to engage in allowed activities or operations. Terms which may not be used include, but are not limited to, "accredited by," "supervised by," "endorsed by," and "recommended by the Commission."~~"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.~~
- ~~(86)~~ "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.
- ~~(7)~~ "Enrollment" or "Enrolled" refers to those students who have attended one (1) session of class, turned in one (1) assignment, or received one (1) distance learning lesson.
- ~~(98)~~ "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.
- ~~(9)~~ "Institutional director" means the individual designated by the institution to assume responsibility for ensuring that the conduct of the institution and its agents are within the Act and these rules.
- (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 may be used for purposes of a postsecondary educational institution in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons at the address. When physical presence activities or operations are

~~not the result of instruction at a postsecondary educational institution location as determined by the Commission staff, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location. "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 ~~alternative~~ optional ~~expedited~~ authorization available pursuant to T.C.A. § 49-7-2022 and these rules to certain accredited ~~degree-granting postsecondary educational~~ 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) "Ownership" and "Owner" mean:~~

- ~~(a) the individual, if the postsecondary educational institution is a sole proprietorship;~~
- ~~(b) all partners, whether full, silent, or limited, if the postsecondary educational institution is a partnership;~~
- ~~(c) all individuals and entities with an interest in the for-profit corporation or other for-profit legal entity, if the postsecondary educational institution is a for-profit corporation or other for-profit legal entity; or~~
- ~~(d) the executive committee of the governing board, if the postsecondary educational institution is a not-for-profit or nonprofit entity.~~

~~(1415) "Postsecondary educational institution" includes, but is not limited to, a school, college, university, or other type of entity offering educational credentials, instruction, educational services, or other activities as described in T.C.A. § 49-7-2007, primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for the attainment of educational, professional, or vocational objectives. The terms "location," "postsecondary educational institution," and "institution" may be used interchangeably such that determinations made pursuant to the Act and these rules are made in regard to the specific location. "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.~~

~~(16) "Primarily located" means the state recognized by the accreditor as the state in which the main campus is located;~~

~~(17)~~ “Prospective student” means a student who has been accepted for attendance at an institution but who is not enrolled as defined in subparagraph (7) of this rule.

~~(1518)~~ “These rules” means all rules contained in Rule Chapter 1540-01-10.

~~(1619)~~ “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,~~ and 2022 Tenn. Pub. Ch. No. 1044.

#### 1540-01-10-.03 Eligibility and Application Requirements.

- (1) In order to receive OEA, a postsecondary educational institution must submit a signed OEA Application demonstrating that the institution meets the following eligibility requirements:
- ~~(a)~~ Meet the definition of degree-granting postsecondary educational institution;
  - ~~(b)~~ Be accredited by a regional or national institutional an 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 an institutional accrediting agency recognized by the U.S. Department of Education indicating that the location for which authorization is being sought is accredited or properly recognized by the accreditor;
    - 2. documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of student complaints. In order to be a comprehensive complaint 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, for example, to the institutional director;
      - (ii) an opportunity for all persons involved in the complaint to be heard at any final step at the institutional-authorized 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-authorized location level may be filed with the Commission; and
      - (iv) an explanation as to how students will be notified of the institution’s comprehensive complaint process;

3. ~~documentation demonstrating the institution is operating lawfully in Tennessee evidencing that the institution is authorized or exempt from authorization in the state where it is primarily located, if the institution is not authorized in Tennessee;~~
  
4. ~~documentation, if deemed necessary, evidencing that the institution meets and maintains financial standards and institutional stability acceptable by the accreditor for the purpose of maintaining accreditation or the United States department of education for the purpose of being a Title IV eligible institution; 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 addresses to the ~~gainful employment data for gainful employment programs~~ most current version of the following information. The address should provide a reasonable person easy access to this information;
- (i) Costs of attendance;
  - (ii) Information on whether academic credits attained are transferable to other institutions operating in Tennessee;
  - (iii) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee, if applicable; and
  - (iv) Federal student cohort default rates.
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 or tree showing the institution's position in relationship to all affiliated ~~corporate-legal~~ entities;
- ~~9. copies of all executed articulation and transfer of credit agreements with other institutions operating in Tennessee;~~
- ~~109.~~ 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~~
- ~~110.~~ affirmation of the requirement to submit statistical data as described in Rule 1540-01-02-.18; and
- ~~11.~~ other than public institutions, a continuous institutional surety bond on the prescribed form.

(c) OEA will be granted for four (4) years, unless otherwise determined by the Executive Director or the Commission. Institutions with a four (4) year authorization term shall submit Certifications of Compliance as provided for in these rules in years one (1), two (2), and three (3) and an OEA Application as provided for in these rules in year four (4).

(d) Commission staff will review an OEA Application to determine whether the application demonstrates that the institution complies with all requisite standards. Upon such a finding and in the case of an initial application, Commission staff will recommend that the Executive Director grant the institution provisional initial authorization. Provisional initial authorization shall list any limitations as to time, procedures, functions, or other conditions as deemed necessary and be subject to review and ratification by the Commission. After ratification, the provisional designation will be removed.

1. An award of provisional initial authorization shall be subject to review and ratification by the Commission.

2. If an award of provisional initial authorization is ratified by the Commission, authorization becomes OEA.

3. If an award of provisional initial authorization is not ratified by the Commission, the institution shall cease all activities and operations as directed by Commission staff in accordance with the Act and these rules.

4. An institution awarded provisional initial authorization may engage in activities and operations; however, limitations as to time, procedures, functions, or other conditions may be imposed as deemed necessary. Such limitations may include, but not be limited to, notifying prospective students in the enrollment agreement, or similar document, that the institution:

i. is authorized provisionally subject to ratification by the Commission, and

ii. must refund all moneys paid by or on behalf of prospective or enrolled students in the event that the Commission does not ratify the award of provisional authorization thereby requiring the institution to cease activities or operations such that students are unable to begin or complete the program of enrollment.

(e) In the event that an OEA Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall provide written notice of the deficiencies to the applicant and provide applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application may be denied or Commission staff will recommend that the Executive Director take adverse action, including but not limited to placing the institution on conditional authorization status, or revoking authorization.



(2) Certification of Compliance

- (a) Annually during the authorization term, institutions with optional expedited authorization shall file a Certification of Compliance by a due date to be established by Commission staff and posted on the Commission's website.
  - (b) The Certification of Compliance shall require at a minimum that the institution self-certify that it is engaged in activities and operations in compliance with the Act and these rules, the institution provide an updated comprehensive program list, and the certification be signed by the institutional director and, if other than the institutional director, the owner or a representative thereof.
  - (c) Commission staff will review a Certification of Compliance and, upon finding that the certification demonstrates that the institution complies with all requisite standards, notify the institution of such. In the event that the Certification of Compliance fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the Certification of Compliance by providing written notice of the deficiencies to the institution and providing the institution two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, Commission staff may recommend that the Executive Director take adverse action, including but not limited to assessing a fine, placing the institution on conditional authorization status, or revoking authorization.
- (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.

(3) Change of Ownership Application:

- (a) Authorization must be issued to the owner or governing body of the applicant institution and is nontransferable.
- (b) A change of ownership occurs when a transaction results in the controlling interest in the postsecondary educational institution changing from an authorized owner to an unauthorized owner. In the event of a change of ownership, the new owner must submit to Commission staff within five (5) 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 conditional authorization until the new owner obtains provisional initial authorization.
- (c) The new owner shall submit an Initial Authorization Application as provided for in Rule Chapter 1540-01-02 or an Optional Expedited Authorization Application thirty (30) calendar days after the notice of conditional authorization.
- (d) The Change of Ownership Application shall require that the new owner provide the sales contract, bill of sale, deed, or other documents necessary to transfer ownership of the institution.
- (e) Commission staff will review a Change of Ownership Application and, upon finding that the application demonstrates that the institution complies with all requisite standards, grant the change of ownership and recommend that the Executive Director grant conditional authorization. In the event that the Change of Ownership Application fails to demonstrate that the institution complies with all requisite standards, Commission staff shall defer the application by providing written notice of the deficiencies to the applicant and providing applicant two (2) opportunities to correct the deficiencies. Following the second failed attempt to correct deficiencies, the application will be denied and the closure process described in Rule .23(b) of these rules will commence.

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, ~~and 49-7-2023~~, and 2022 Tenn. Pub. Ch. No. 1044.

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;

(e) change of ownership; or

(f) change of institutional director.

(2) Institutions shall submit a New Program Notification Form when the institution offers a new program 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~~ and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.05 Denial or Withdrawal of an Application or Certification of Compliance of Oea Status.

(1) When an application or certification is before Commission staff for consideration, Commission staff will provide the applicant written notice of its final determination. If, upon written notification of any action taken by Commission Staff, an aggrieved applicant desires a review by the Executive Director, the applicant shall notify the Executive Director within ten (10) business days of the date of the action of the Executive Director, otherwise the action of Commission staff shall be deemed final and no further review available. Any request for review by the Executive Director shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner.

~~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) If, upon written notification of any action taken by the Executive Director, an aggrieved applicant desires a hearing and review by the Commission, pursuant to T.C.A. § 49-7-2012, the applicant shall notify the Commission within ten (10) business days of the date of the action of the Executive Director, otherwise the action of the Executive Director shall be deemed final and no further review available. Any request for review by the Commission shall be in writing, signed, and provide a detailed explanation of each alleged error with references to the Act or these rules. A request may be denied if it is not received in a timely manner. 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) ~~Any person, agent, group or entity aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012. 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 2022 Tenn. Pub. Ch. No. 1044~~ and 49-7-2023.

1540-01-10-.06 Conditional Status of or Revocation of OEA Status.

- (1) OEA may be made conditional or revoked for just cause or as otherwise noted in T.C.A. § 49-7-2022. 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;
  - ~~(h) Retaliating against a complainant who exercises their right to complain; or~~
  - ~~(h)~~ (h) Allowing OEA to expire without timely filing an OEA Application, Certification of Compliance, 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 ~~thirty (30) calendar days after the notice 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 until the Commission determines that all bases for revocation have been resolved 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.

(5) Any action by the Commission or Executive Director under this rule shall be subject to review as provided in T.C.A. § 49-7- 2012. All Commission actions are subject to due process provisions of the Uniform Administrative Procedures Act

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, ~~and 49-7-2023~~, and 2022 Tenn. Pub. Ch. No. 1044.

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 exhausted the institution complaint process~~ 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 as necessary:
  - (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-~~19(9)02(2)(b)~~. Such date shall ~~not be earlier than~~ be 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-~~19(9)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~~Commission as provided for in Rule 1540-01-02-~~19(9)02(2)(b)~~. ~~Such date shall not be earlier than ten (10) business days after the date of the written determinations.~~
    - (iii) Any party to the complaint aggrieved or adversely affected by any final commission action may obtain judicial review of the action as provided in T.C.A. § 49-7-2012.
- (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,~~ and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.08 Filing Methods and Requirements.

- (1) ~~Application d~~Due dates, denials, and deferrals, and withdrawals:
- (a) ~~For purposes of these rules, application refers to any application or certification.~~
  - (b) ~~When a due date is provided by Commission staff, a complete application in the prescribed format shall be received at the Commission by the close of business on the due date. Applications received after the due date will be deemed late and will be reviewed after all timely filed applications or certifications are reviewed. For purposes of these rules, applications refer to any applications or certifications. 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)c) ~~Initial OEA Applications shall be filed in the prescribed format and may be filed at any time. All other OEA Applications shall be filed as provided for in these rules. Applications and certifications will be reviewed when complete. When received, Commission staff shall determine whether an application is complete and notify the applicant if the application is incomplete. An applicant will have thirty (30) calendar days to complete an incomplete application. Incomplete applications or certifications include applications or certifications submitted without all applicable fees or an attachment. An application that is not completed by the prescribed due date will be withdrawn. 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)d) ~~Denial or withdrawal of an application does not prevent the applicant from submitting a new application. 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) ~~Applications shall be filed electronically as prescribed in the application or using DPSA's electronic forms portal. 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,~~ and 2022 Tenn. Pub. Ch. No. 1044.

1540-01-10-.09 Fees.

- (1) An institution shall pay a fee of nine thousand dollars (\$9,000) to the Commission ~~with~~ when filing an Optional Expedited Authorization Application or Certification of Compliance. Any convenience charge for electronic payments shall equal the amount charged by the vendor.
- (2) ~~If an institution withdraws an application within three (3) business days from receipt, then all fees assessed less the convenience charge for electronic payments shall be refunded. After three (3) business days from filing of the application, all fees are nonrefundable.~~
- (3) ~~Institutions that fail to complete the application process described in Rule .08 of these rules shall forfeit all fees paid.~~

Authority: T.C.A. §§ 49-7-2005, 49-7-2022, ~~and 49-7-2023,~~ and 2022 Tenn. Pub. Ch. No. 1044.