

TENNESSEE BOARD OF REGENTS

COMPLIANCE REVIEW AND IMPLEMENTATION PLAN

FOR TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

2014-2015

John A. Morgan, Chancellor

October 1, 2014

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1. Overview

The Tennessee Board of Regents (“TBR”) was created in 1972 by the General Assembly as the governing body of the State University and Community College System of Tennessee. At that time, the member institutions of the System were the state universities and community colleges formerly governed by the State Board of Education. In 1983, the General Assembly transferred the technical institutes and area vocational technical schools to the System. The TBR System is currently comprised of six universities, thirteen two-year community colleges, and twenty-seven colleges of applied technology that collectively enroll over 200,000 students in 90 of the 95 counties in Tennessee. These institutions offer a very broad range of postsecondary academic programming from doctoral degrees to technical certificates.

Upon recommendation of the Tennessee Higher Education Commission, the Tennessee General Assembly appropriates funds to TBR institutions.

The composition and powers of TBR are set forth in Tennessee Code Annotated §49-8-201 through § 49-8-203. TBR’s Board consists of eighteen members, including four *ex officio* members who are the governor, the commissioners of education and agriculture, and the executive director of the higher education commission. As a legislative entity, the purpose of TBR is to govern and manage the System. It is empowered to define the duties of and employ the System Chancellor and select and employ Presidents and Directors of the institutions. The System Chancellor, six Vice Chancellors and the Central Office staff are seated at the TBR Central Office, located in Nashville, TN. An Organizational Chart of the TBR Central Office Senior Staff is included as **Attachment 1**.

Public Chapter 502 enacted by the General Assembly in 1993 mandates that any agency which receives federal assistance develop an implementation plan for enforcement and compliance with Title VI of the Civil Rights Act of 1964. TBR System Policies 2:02:10:01 and 5:01:02:00 (**Attachments 2 & 3**) specifically state TBR’s stance on discrimination. TBR Guideline P-080 (**Attachment 4**) explains the complaint process for students, employees and third parties.

2. Definitions

Assurance: As required by 34 CFR § 106.4, every application for Federal financial assistance for any educational program or activity shall as condition of its approval, contain an assurance from the applicant or recipient that each program or activity operated by the applicant and to which the regulations apply, will be operated in compliance with Title VI and the implementing regulations.

Educational Program or Activity: "Educational program or activity" encompasses most operations of the TBR institutions.

Federal Financial Assistance: "Federal financial assistance" is defined by 34 CFR § 106.2(g) as:

- (1) A grant or loan of Federal financial assistance, including making funds available for:
 - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
 - (ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity.
- (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
- (3) Provision of the services of Federal personnel.
- (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
- (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

TBR Central Office or Central Office: The Nashville based office for the TBR that houses the Chancellor, six Vice Chancellors and department staff assigned to each Vice Chancellor.

TBR System or System: The institutions that make up the nation's sixth largest system of public higher education. This includes six state universities, 13 community colleges, and 27 colleges of applied technology.

Recipient: “Recipient” is defined by 34 CFR § 106.2 (i) as any State...or any instrumentality of a State...to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance...

3. **Federal programs or activities**

The Central Office does not receive any direct funding from the Federal Government for federal programs or activities. Student financial aid assistance is available directly from the federal agency to the student. The amount of federal assistance received and how that assistance is distributed among the agency's programs is available in the institution's budget on file. The report “Statement of Revenues, Expenditures, and Changes in Net Assets” (**Attachment 5 – to be provided**) will show federal and state dollars allocated to

TBR according to each budget category. Each institution has a list of federal dollars allocated to the institution. This Document is currently incomplete and will be sent to the THRC as an addendum before November 15, 2014.

4. Organization of the Civil Rights Office/Civil Rights Coordinator

Pursuant to TBR Policy 5:01:02:00, “Equal Employment Opportunity, Affirmative Action, Discrimination and Nepotism,” the Chancellor designates a person on the System staff to serve as the Equal Employment Opportunity/Affirmative Action Officer for the TBR System. The TBR System Acting Title VI Officer is Wendy Thompson. A permanent Title VI system officer should be on board by the end of October 2014.

The Chancellor has also directed the president and/or director of each institution to appoint an EEO/AA officer for the institution. This person is primarily responsible for employment issues. Complaints involving discrimination or harassment involving students are primarily investigated and resolved by student affairs officers, but at some institutions the Affirmative Action/Equal Opportunity Officer investigates these complaints as well.

Throughout the system, Title VI responsibilities may be full-time or split with other functional duties and responsibilities. In most cases, the Affirmative Action Officers serve as institutional Title VI Coordinators due to their training in processing complaints and grievances and familiarity with procedures under due process. Duties of the Affirmative Action Officer are provided in Section III. C. of the TBR policy 5:01:02:00, “Equal Employment Opportunity, Affirmative Action”. The name and contact information of each Title VI Coordinator in the TBR System is outlined in **Attachment 6**. A list of those individuals is also maintained on the TBR website at www.tbr.edu.

Maintaining records and the development of the annual Title VI implementation plan are the responsibility of the Title VI Officers and the institutions’ Presidents/Directors. The System-wide TBR Title VI implementation plan is drafted by the Office of Effectiveness and Strategic Initiatives and the Office of General Counsel at the TBR System Office.

5. Data collection and analysis, including total number of complaints received

The Tennessee Board of Regents works with the Governor’s Office of Diversity Business Enterprise to establish annual goals for utilizing small, minority, and women owned businesses. Data is collected from the institutions by the System procurement office. The data indicating the final percentage of expenditures of TBR Institutions to “Small, Minority, and Women owned businesses in fiscal year 2013 – 2014” is outlined in Attachment 6. Included in the report is the number of awards to each ethnic group, as well as the amount TBR spent with each group.

The Tennessee Board of Regents' Central Office staff of 129 individuals is comprised as follows:

	Tennessee Board of Regents: Central Office Staff	
	Total Number	Percent of Total
Asian	3	<1%
African American	15	13%
White/Caucasian	111	86%

TBR employees are not a part of the civil service system and therefore none are categorized as “preferred” or “executive service”.

6. Discriminatory practices

TBR Policies and Guidelines referred to earlier in this plan are designed to address the circumstances/ issues described below as they relate to examples of discriminatory practices in post-secondary education.

A. Examples of student educational discriminatory practices may include, but are not limited to:

- Segregated campus housing based on race, color or national origin
- Discriminatory assignment of remedial classes based on race, color or national origin

B. Examples of employment related discrimination may include, but are not limited to:

- Discrimination in the recruitment, selection and hiring of personnel for federally funded programs based on race, color or national origin ;
- Subjecting an individual to discriminatory employment practices under any federal program intended to provide employment based on race, color or national origin

C. General prohibitions include, but are not limited to:

- Denying any individual any services, opportunity, or other benefit for which he/she is otherwise qualified, based on race, color or national origin
- Providing any individual with any service, or other benefit, which is different or is provided in a different manner from that which is provided to others under the program, based on race, color or national origin

- Subjecting any individual to segregated or separate treatment in any manner related to his receipt of service;

7. Limited English Proficiency (LEP)

TBR Guideline G-130- Limited English Proficiency Policy (LEP) is included as **Attachment 8**. One institution Human Resources department indicated that they translated their documents into Spanish.

8. Complaint Procedures

There were no Title VI complaints filed at the TBR Central Office in FY 14.

There were 29 complaints filed at institutions.

	Tennessee Board of Regents: Central Office Complaints Filed
Administrative Closings	0
Closed for Failure to meet Prima Facie Case	14
Settled and/or Resolved	7
Immediately Referred to State or Federal Agency	0
Total Complaints Filed	29

There was one (1) lawsuit filed against the TBR Central Office or any of its campuses alleging discrimination on the basis of race. That lawsuit was dismissed.

Any individuals including, but not limited to, students, employees, intended third party beneficiaries (Footnote1) of institutional programs who believes that he/she is being discriminated against by the Tennessee Board of Regents can file a complaint according to TBR Guideline P-080, "Harassment - Racial, Sexual and Other," and TBR Guideline P-110, "Employee Grievance/Complaint," and local complaint procedures which have been developed for student-related issues. A copy of the System form is included within **Attachment 10**.

All officers have been notified of the complaint investigation form made available by The Office of Human Rights. Each Title VI officer must log each complaint as mandated by law.

"Each federal agency shall maintain a log of Title VI complaints filed with it and with its recipients, identifying each complainant by race, color, or national origin; the recipient, the nature of the complaint, the dates the complaint was filed and the investigation completed, the disposition; and other pertinent information. The time frames for resolution

1 In March 2004, the TBR Office of General Counsel distributed a memorandum to each institution that discusses the rights of third party beneficiaries under Title VI as mandated by federal and state law. The memorandum explicitly provides that intended third party beneficiaries are entitled to protection from discriminatory acts under Title VI, and that they may file Title VI complaints / grievances at TBR institutions pursuant to the policies for filing such complaints if they think that they have been discriminated against by the institution on the basis of race, color, and / or national origin.

and complaint processing are found in institutional procedures. Records are maintained for annual reporting.”

Whenever a discriminatory practice is discovered, the institution/school shall promptly and voluntarily attempt to secure compliance.

TBR Policy 5:01:02:00, “EEO/Affirmative Action” requires that internal complaint procedures be designed to expeditiously process and resolve complaints and grievances by employees or applicants for employment. Students are provided institutional complaint procedures for resolution of issues of concern.

Compliance for Title VI is found in existing TBR policies, guidelines, and reporting mechanisms found in the documents listed in this section. The TBR policies and guidelines are available at: <http://www.tbr.state.tn.us/policies/default.aspx?id=1166>.

- Policy 5:01:02:00 – “Equal Opportunity/Affirmative Action” (Attachment 3)
- Guideline P-080 – “Harassment - Sexual, Racial and Other” (Attachment 4)
- Guideline G-125-“Process for Filing Title VI Complaints” (Attachment 5)
- Grievance Procedure in TBR Guideline P-110 (Attachment 10)
- Guideline P-010 - “Personnel Transactions” (Attachment 11)
- Guideline G-030 - “Contracts and Services” (Attachment 12)
- Policy 3:04:01:00 – “Student Scholarships, Grants, Loans/Aid” (Attachment 17)

Publications such as the institutional catalog, advertisements, and faculty and staff handbooks contain notice of nondiscrimination statements. In addition, the processes for dissemination are found in each campus affirmative action plan and handbooks for students and staff. The ultimate responsibility for implementing the program at each institution rests with the President/Director. The institutions’ plans are designed to increase student, faculty and staff diversity at TBR institutions and run congruent with their strategic plans and the TBR Strategic Plan.

9. Compliance Review

Periodic compliance reviews will be conducted in the annual cycle, along with the submission of affirmative action plans and supporting desegregation data. The TBR Title VI Compliance Survey/Checklist, (Attachment 14), has been developed and is being used annually to survey compliance with Title VI. All TBR institutions are required to submit the Title VI Compliance Survey/Checklist to the Office of Access and Diversity and the TBR System Equity Officer annually.

For the FY14, the Central Office does not have any sub-recipients or contractors.

TBR does not have a pre-award procedure.

10. Compliance/noncompliance reporting

TBR is obligated by the Methods of Administration for Compliance with the Office of Civil Rights (**Attachment 13**) to make annual reports regarding equity concerns, including Title VI concerns to the Office of Civil Rights.

Copies of assurances, public notification plans, press releases and training materials will be maintained at each campus location. Institutions will report to the TBR System Office all Title VI concerns for each fiscal year. These concerns will be compiled into a report by the Central Office Title VI coordinator. The report may be furnished to other agencies of federal and state government, the Human Rights Commission, and the Department of State Audit, upon request. Outside agencies may review the report, accumulate its own data, and prepare an annual report on the actions and plans taken by the TBR to comply with Title VI.

When a recipient (campus) is determined to be in noncompliance, an attempt will first be made to seek voluntary compliance. If this is unsuccessful, then the institution/school may be reviewed for compliance with the possible result of being terminated from federal assistance for the activity.

TBR compliance will be achieved by: 1) affirmative actions required by policies and guidelines of; 2) corrective actions revealed by annual reporting of activities; and 3) continued review and monitoring of census data.

11. Title VI Training

As of July 2014 there were 15,817 employees throughout the system with 129 of those in the central office. While the system operates on a common fiscal year for budget purposes, the institutions operate on an academic calendar that affects the number and type of employees. The universities and community colleges operate on semester terms within an academic year and the colleges of applied technology operate on a trimester terms. Projected enrollment within a particular term can affect the number of non-permanent employees retained or added. Each campus Title VI officer is given the flexibility to establish his/her own schedules for refresher course training, and may utilize other training programs, the number of annually trained TBR employees will vary from year to year. In 2013-2014 – approximately 80% of TBR employees received Title VI training.

Additionally, periodic training occurs with all Title VI officers, particularly as changes occur with federal and state law as it relates to Title VI. All Title VI officers are encouraged to attend all federal and state Title VI trainings that may occur in their area and across the state and region.

The online TBR Title VI training is utilized by the central office and is available for use by the institutions. This training provides the basis for online and other methods of training used throughout the system.

The online training module may include a variety of topics, such as:

1. Civil Rights
 - 1.1 Introduction
 - 1.2 The Origin of Civil Rights
 - 1.3 Civil Rights Act of 1964
2. Title VI
 - 2.1 What is Title VI?
 - 2.2 Title Sections
 - 2.3 How to Apply Title VI
 - 2.4 Programs that Qualify for Title VI
3. Tennessee Title VI Law
 - 3.1 Tennessee Attorney General
4. Prohibited Acts
 - 4.1 Prohibited Acts under Title VI
5. Title VI Compliance
 - 5.1 Keys to Title VI Compliance

Orientation programs on all campuses for new employees should continually inform staff of their responsibility of compliance with Title VI, as do the Title VI Campus Posters (**Attachment 15**).

12. Public Notice and Outreach

The Title VI Implementation Plan reflects current Board policy and guidelines which have been reviewed by the various sub-Councils of TBR and are in place on each campus. The TBR Title VI implementation plan can be found on the TBR website and is also available upon request at the TBR central Office. TBR Guideline P-080 (Attachment 4) explains the complaint and process for students, employees and third parties. TBR System Policies 2:02:10:01 and 5:01:02:00 (**Attachments 2 & 3**) specifically state the TBR's policy on discrimination.

Minority targeting publications are routinely used when advertising vacant positions in the system.

The TBR's board members' are appointed by the Governor of Tennessee. The current racial composition is three (3) African-American, and fifteen (15) Caucasians. The board sets policies and guidelines that govern all TBR institutions. A list of the names and races of the eighteen Board Members of the Tennessee Board of Regents is included in **Attachment 16**. Information about the board is included on the TBR website at www.tbr.edu.

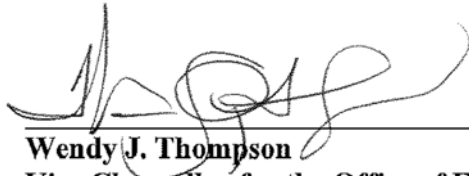
The TBR Central Office of Purchasing and Contracts (“OPC”) maintains a webpage on the TBR website. The OPC webpage contains a listing of all current bid opportunities for goods and services. Additionally, the TBR related department requesting the good or service provides the OPC with a list of potential vendors for the good or service requested. The OPC notifies those potential vendors by letter regarding the bidding opportunity, including a description of the solicitation and how to access the pertinent information via the web. The OPC also provides an annual list of known and upcoming procurement opportunities to the Governor’s Office of Diversity Business Enterprise. Many of the individual TBR institutions follow the same process.

13. Evaluation procedures of Title VI implementation

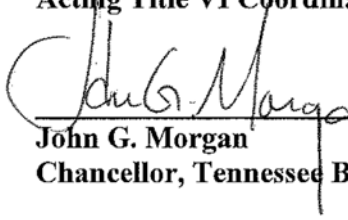
The TBR system will implement and continuously review and monitor activities and programs to ensure equity that is consistent with federal and state guidelines for Title VI compliance. In addition, the TBR will continue to review all TBR and institutional policies and guidelines to ensure compliance with Title VI program activities. Some of the ways this will be accomplished are:

1. Continued communication on the Title VI of the Civil Rights Act of 1964 and the new implementation plan no later than October 1 of each year or the earliest date the plan is approved.
2. Posting of Title VI posters that are unique to the Tennessee Board of Regents at locations throughout the system to reflect the TBR's commitment to and compliance with Title VI requirements.
3. Discussion at meetings of Affirmative Action, Student Affairs, and Academic Affairs Officers regarding achievement of employment and student objectives and intent of Title VI.
4. Copies of assurances, public notification plans, press releases and training materials are maintained at each campus location. Institutions will provide annual reports on Title VI compliance to the central office. These reports may be furnished to other agencies of federal and state government, the Human Rights Commission, and the Department of State Audit. The outside agencies may review the reports, accumulate data, and prepare an annual report on the actions and plans taken by the individual department to comply with Title VI.

14. Responsible Parties:



Wendy J. Thompson
**Vice Chancellor for the Office of Effectiveness &
Strategic Initiatives**
Acting Title VI Coordinator



John G. Morgan
Chancellor, Tennessee Board of Regents

Attachments

- Attachment 1. TBR Organizational Chart-Senior Staff**
- Attachment 2. TBR Policy 2:02:10:01 Sex Discrimination and Sexual Harassment**
- Attachment 3. TBR Policy 5:01:02:00, Equal Employment Opportunity, and Affirmative Action**
- Attachment 4. TBR Guideline P-080, Discrimination and Harassment Complaint and Investigation Procedure**
- Attachment 5. TBR Statement of Revenues, Expenditures, and Changes in Net Assets (TO BE PROVIDED)**
- Attachment 6. List of Title VI Coordinators**
- Attachment 7. Expenditures to Small, Minority and Women Owned Businesses**
- Attachment 8. TBR Guideline G-130 Limited English Proficiency (LEP)**
- Attachment 9. TBR Guideline G-125, Process for Filing Title VI Complaints**
- Attachment 10. TBR Guideline P-110 Grievance/Complaint Procedure and System Office Complaint form.**
- Attachment 11. TBR Guideline P-010-Personnel Transactions**
- Attachment 12. TBR Guideline G-030 Contracts and Agreements**

Attachment 13. TBR Guideline G-120-Method of Administration for Compliance with Office of Civil Rights, Title VI, Title IX, and Section 504

Attachment 14. TBR Title VI Compliance Survey/Checklist

Attachment 15. TBR Title VI Campus Poster

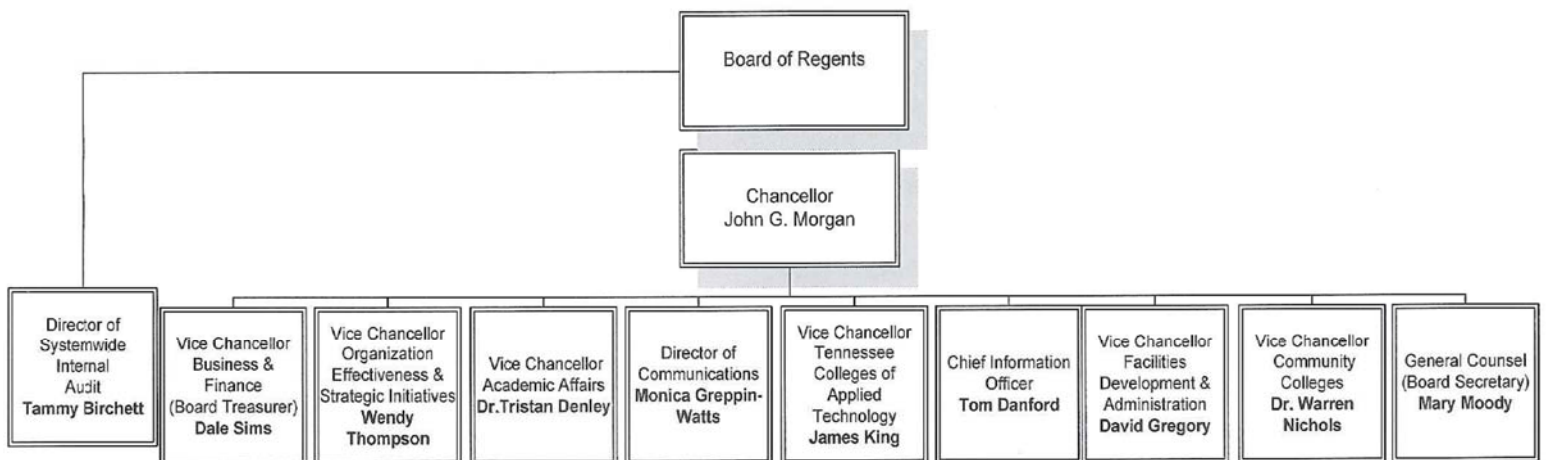
Attachment 16. TBR Board of Regents Members

Attachment 17. TBR Policy 3:04:01:00 Student Scholarships, Grants, Loans, and Financial Aid Programs



TENNESSEE BOARD OF REGENTS
STATE UNIVERSITY & COMMUNITY COLLEGE SYSTEM OF TENNESSEE

Senior Staff – Central Office
August 2013



Policy 2:02:10:01

Subject: Sex Discrimination and Sexual Harassment

A. Introduction

It is the intent of the Tennessee Board of Regents that the institutions and Tennessee Technology Centers under its jurisdiction shall fully comply with Title VI of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act and Regulations issued pursuant thereto (45 C.F.R. Parts 83 and 86). The following policy and procedures are adopted by TBR to assist the institutions and technology centers in such compliance.

B. Policy

1. Sex Discrimination

It is the policy of the Tennessee Board of Regents that, pursuant to Title VI of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act, and Regulations adopted pursuant thereto, no institution or technology center shall discriminate on the basis of sex in the education programs or activities of the institution or technology center, including health-related training programs. Institutions and technology centers shall ensure that equal opportunity and nondiscrimination exist on the basis of sex for students in all education programs and activities, including but not limited to, the following: (1) recruitment and admission; (2) academic, extracurricular, research, occupational training, health-related training, and other education programs; (3) rules on student life activities; (4) housing; (5) facilities; (6) access to course offerings; (7) counseling; (8) financial assistance; (9) employment assistance; (10) health and insurance benefits and services; (11) rules on marital or parental status; and (12) athletics. In addition, in conjunction with Board Policy No. 5:01:02:00, each institution and technology center shall ensure that no person, on the basis of sex, is excluded from

participation in, denied the benefits of, or subjected to discrimination in employment under any education program or activity. Nondiscrimination in employment on the basis of sex shall include, but not be limited to, the following areas: (1) employment criteria; (2) recruitment and hiring; (3) promotion, tenure, demotion, transfer, layoff, termination, nepotism policies, and rehiring; (4) compensation; (5) job assignments, classifications, and descriptions, lines of progression and seniority lists; (6) leave; (7) fringe benefits; and (8) all other terms, conditions, and privileges of employment.

2. Sexual Harassment

It is the policy of the Tennessee Board of Regents that pursuant to Title VI of the Education Amendments of 1972 and regulations adopted pursuant thereto, no institution or technology center shall condone sexual harassment of students, applicants for employment or employees and each institution and technology center shall affirmatively address all allegations of sexual harassment. Compliance with this policy shall be effectuated through procedures established in accordance with Section C.2 of this policy and Guideline P-080.

C. Procedures

1. Designation of Responsible Employee. Each institution and technology center shall designate at least one employee who will coordinate the efforts of the institution or technology center to comply with the Acts and the Regulations. The designated employee or employees should have sufficient time and ability to evaluate the compliance efforts of the institution technology center, coordinate such efforts, and investigate complaints by employees or students arising under the Acts and the Regulations. The names of the designated employee or employees of each institution and technology center should be submitted to the Chancellor.

2. Complaint Procedures. Students and employees shall utilize the complaint and investigation procedure set forth in TBR Guideline P-080 Discrimination and Harassment

– Complaint and Investigation Procedure (or the institution’s corresponding policy) when filing complaints arising under the Acts or the Regulations.

3. Statement and Dissemination of Policy. (a) Each institution and technology center shall designate a policy statement reaffirming the fact that it does not discriminate on the basis of sex in the educational programs or activities which it operates and that it is required by Title VI of the Educational Amendments of 1972, Sections 799A and 845 of the Public Health Service Act, and 45 C.F.R. Parts 83 and 86 not to discriminate in employment in or admission to education programs or activities. The policy statement shall include the name and address of the employee or employees designated pursuant to Item 1, to whom inquiries concerning the application of the above Acts or the Regulations adopted pursuant thereto may be directed and (b) each institution and technology center shall adopt specific and continuing measures whereby applicants for admission and employment, students, employees, and sources of referral of applicants for admission and employment will be notified of the policy adopted pursuant to section (a) of this item. The policy statement adopted pursuant to section (a) of this item shall be published in the following publications: (1) local newspapers; (2) newspapers and magazines operated by the institution or technology center or by student or alumni groups; and (3) memoranda or written communications to every student and employee of the institution or technology center.

In addition, each institution and technology center shall include the policy statement in each announcement, bulletin, catalog, and application form which it makes available to any person herein described, or which is used in connection with the recruitment of students or employees.

4. Self-Evaluation. Each institution and technology center shall submit to the Chancellor a written self-evaluation of its current policies and practices and the effects thereof concerning admission and treatment of students, and employment of academic and non-academic personnel working in connection with the institution's or technology center's education programs and activities. Each institution and technology center shall modify any

policies and practices which do not meet the requirements of Title VI, the Public Health Service Act, or the Regulations issued pursuant thereto, shall take appropriate remedial steps to eliminate the effects of any discrimination which resulted from such policies and practices, and shall recommend to the Chancellor amendment of any state legislation which inhibits compliance with Title VI, the Public Health Service Act, and the Regulations issued pursuant thereto.

Source: TBR Meetings, October 17, 1975; September 30, 1983; December 14, 1984; March 28, 2008; June 19, 2009 to take effect on July 1, 2009.

Policy 5:01:02:00

Subject: Equal Employment Opportunity and Affirmative Action

I. Introduction

It is the intent of the Tennessee Board of Regents that TBR and all of the institutions within the Tennessee Board of Regents System will promote and insure equal opportunity for all persons without regard to race, color, religion, sex, ethnic or national origin, disability status, age or status as a covered veteran and shall fully comply with Executive Order 11246, as amended; the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; the Vietnam Era Veterans Readjustment Act of 1974, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967, as amended the Age Discrimination Act of 1975; the Pregnancy Discrimination Act; applicable state statutes and all regulations promulgated pursuant thereto.

It is the intent of TBR that each campus of TBR shall be free of harassment on the basis of sex, and race, and shall fully comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964, as amended; Title VI of the Education Amendments of 1972, as amended, the federal and state constitutions, and all other applicable federal and state statutes.

II. Statement of Policy

TBR Regents hereby reaffirms the policy of the Tennessee Board of Regents System, and all institutions and technology centers included therein, that the System will not discriminate against any employee or applicant for employment because of race, color, religion, ethnic or national origin, sex, disability, age or status as a covered veteran.

Similarly, the System shall not, on the basis of a protected status, subject any student to discrimination under any educational program. No student shall be discriminatorily excluded from participation in nor denied the benefits of any educational program on the basis of a protected status.

The System will take affirmative action to ensure that all individuals are treated during the employment process without regard to their race, color, religion, ethnic or national origin, sex,

disability, age, or status as a covered veteran. Such action shall include, but not be limited to, actions to:

- (1) Recruit, hire, train, and promote persons in all job titles, without regard to any of the foregoing prohibited factors;
- (2) Base decisions on employment so as to further the principle of affirmative action and equal employment opportunity;
- (3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; and
- (4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, and institution or school sponsored training, education, tuition assistance, and social and recreation programs, will be administered without regard to any of the foregoing prohibited factors.

It is and has been the policy of the Tennessee Board of Regents to maintain each campus as a place of work and study for faculty, staff, and students, free of sexual and racial harassment. Harassment is a form of discrimination and harassment in the workplace or the educational environment is unacceptable conduct and will not be tolerated.

III. Administrative Responsibility

A. Duties of the Chancellor and/or System Equal Employment Opportunity and Affirmative Action Program Officer.

The Chancellor shall designate the person on the staff of TBR who shall serve as the Equal Employment Opportunity/Affirmative Action Officer (hereinafter EEO/AA) for the System and also designate an EEO/AA Officer for the Central Office. The Chancellor shall direct the President and/or Director of each institution to appoint an EEO/AA Officer for the institution. The Chancellor shall furthermore ensure participation in Board approved access and diversity initiatives.

The Chancellor shall insure that the following actions occur:

1. Equal Employment and Affirmative Action
 - (a) Equal employment opportunity and affirmative action program plans are to be prepared by each campus EEO/AA Officer at the individual institutions and schools in the System and these

plans must be effectively administered by the campus EEO/AA Officer within the requirements of this policy and applicable laws and regulations. The EEO/AA Officer for the Central Office shall prepare the Central Office affirmative action plan.

(b) The system EEO/AA Officer will review and evaluate the success of the equal employment opportunity and affirmative action programs in the Central Office and on each campus and make recommendations to the Chancellor concerning desirable changes.

(c) The institutional EEO/AA Officer and the TBR Central Office EEO/AA Officer will receive, review, and investigate institution and Central Office equal employment opportunity complaints and appeals and make recommendations regarding their disposition to the President in the case of an institutional complaint and to the Chancellor regarding a Central Office complaint.

2. Harassment

Depending on the focus of the complaint, the Chancellor and Presidents/Directors are responsible for the final resolution of a harassment complaint. The Chancellor shall insure the following actions occur:

(a) Investigation of Harassment Complaints

The Chancellor shall designate the Tennessee Board of Regents' General Counsel to supervise the investigation and give legal advice to the institution or Central Office EEO/AA Officer who will receive, review, and investigate all charges of harassment arising from their institution or office. The institution or Central Office EEO/AA Officer will investigate all complaints of unlawful harassment as directed by Guideline P-080 and will communicate all facts to the General Counsel for legal advice. It is the intent of this policy that the review and investigation process conducted by the campus or Central Office Affirmative Action Office will be under the direct supervision and control of the General Counsel and is intended to be a confidential communication which will result in Counsel giving legal advice.

(b) Resolution of Harassment Complaints

The Chancellor and TBR have designated the institution or Central Office EEO/AA Officer as the coordinator and investigator of all harassment complaints. The process outlined in Guideline P-080 will be followed. The President/Director/Chancellor will assure that the EEO/AA Officer

investigates the complaint. The final report on the harassment complaint will go from the EEO/AA Officer to the President/Director/Chancellor for action and the final resolution will be made by that individual.

3. Annual Evaluations

The Chancellor will annually evaluate each president/director on their progress toward the affirmative action plan goals, their progress toward diversity, and their participation in Board approved access and diversity initiatives.

B. Duties of the President/Director

Each institution President and technology center Director shall be responsible for the development and implementation of the equal employment opportunity and affirmative action program on each campus as well as assuring that unlawful harassment is investigated and educational efforts regarding harassment take place. In carrying out this responsibility, the President or Director shall comply with the following:

1. Appoint an EEO/AA Officer who will be responsible for promoting and assuring compliance with this policy and with all applicable laws and regulations, receiving and investigating complaints pursuant to the process set forth in TBR Guideline P-080, reviewing the effectiveness of the program and recommending improvements to the President or Director.
2. Insure that affirmative action plans are developed annually and implemented as a means of aggressively pursuing the principles of equal employment opportunity.
3. Develop affirmative action goals and timetables directed toward correcting situations contributing to the under-utilization or inequitable treatment of minority or women employees in the institution or school.
4. Provide positive leadership in the implementation of the affirmative action program on the campus and insure that appropriate attention is devoted to the program in staff and faculty meetings.
5. Inform all management officials and supervisors that their performance evaluation will be partially determined by the effectiveness of their participation in the equal employment opportunity program and in Board approved access and diversity initiatives.

6. Designate a person on the campus to be responsible for gathering and reporting data related to the equal employment opportunity program.

7. Assure policies and procedures are instituted to deal with all forms of harassment, including a procedure for the EEO/AA Officer to receive and investigate complaints and recommend necessary action to the President or Director.

8. Designate the EEO/AA Officer as the staff person responsible for the development and implementation of educational efforts regarding all types of harassment.

C. Duties of the EEO/AA Officer

1. Equal Employment Opportunity and Affirmative Action Program

The EEO/AA Officer will develop and maintain an EEO/AA program which shall include but not be limited to the following responsibilities:

(a) The institution/Central Office EEO/AA Officer will receive, review and investigate equal employment opportunity complaints and appeals and make recommendations to the President/Director of Chancellor regarding their disposition.

(b) Equal employment opportunity or affirmative action complaints made to external agencies, i.e. EEOC or THRC, will be investigated by the institution or Central Office EEO/AA Officer in conjunction with the Office of the General Counsel. All complaints will be forwarded to the Office of the General Counsel and any reports to the external agency will be prepared by the institution and submitted to the Office of the General Counsel for approval and forwarding to the agency. The attorney/client relationship will apply to the investigation and preparation of those reports.

(c) The EEO/AA Officer will develop and maintain an EEO/AA program which shall include: (1) developing or reaffirming the institution's or school's equal employment opportunity policy in all personnel actions; (2) formal internal and external dissemination of the policy; (3) establishing responsibilities for implementation of the program; (4) identifying problem areas by organizational units and job classifications; (5) establishing goals and objectives by organizational units and job classifications, with timetables for completion; (6) developing and executing action-oriented programs designed to attain established goals and objectives; (7) assuring compliance of personnel policies with the sex discrimination guidelines; (8) active

support of local and national community action and community services programs designed to improve the employment opportunities of minorities and women; (9) internal audit and reporting systems designed to insure compliance and to permit monitoring of the program; and (10) internal complaint procedures designed to expeditiously process and resolve complaints and grievances by employees or applicants for employment.

(d) Updating the EEO/AA plan annually, and reporting progress in meeting the established goals and objectives, with such report submitted at least annually to the Chancellor as directed by the System EEO/AA Officer. The EEO/AA Officer shall discuss the success of the EEO/AA program with the President and make recommendations regarding desirable changes.

2. Harassment Program

(a) Each institution and Central Office EEO/AA Officer will be responsible for implementing Guideline P-080 Discrimination and Harassment – Complaint and Investigation Procedure.

(b) The EEO/AA Officer will assure the development of an educational program alerting students and employees to the non-harassment policy and guideline.

(c) Under the direction and guidance of the TBR General Counsel, the institution or Central Office EEO/AA Officer will investigate all harassment complaints. The institution or Central Office EEO/AA Officer will receive, review, and investigate all complaints of harassment based on sex, race, color, religion, ethnic or national origin, or other protected status. (d) The EEO/AA Officer will insure that complaints involving discrimination or harassment between students are investigated and resolved by the Student Affairs Office, which resolves all student disciplinary problems.

Source: TBR Meetings, August 17, 1973; September 26, 1980; September 30, 1983; December 14, 1984; March 17, 1989; September 21, 1990; June 25, 1992; December 10, 1993; March 30, 2001; December 8, 2006; March 28, 2008; June 19, 2009

Guideline P-080

Subject: Discrimination and Harassment – Complaint and Investigation Procedure

I. Introduction

- A. Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth.
 - 1. These procedures may be utilized by any employee, applicant for employment or student who believes he or she has been subjected to discrimination or harassment.
 - 2. Former employees or students may file complaints concerning conduct which took place during the time of employment or enrollment provided the complaint is timely filed pursuant to Section V.B of this Guideline, and the conduct has a reasonable connection to the institution.
- B. All employees, including faculty members, are to be knowledgeable of policies and guidelines concerning discrimination and harassment.
 - 1. Using the procedures outlined in Section V below, supervisory employees must promptly report, to the appropriate institutional contact, any complaint or conduct which might constitute harassment, whether the information concerning a complaint is received formally or informally.
 - 2. Failure to do so may result in disciplinary action up to and including termination.
- C. All faculty members, students and staff are subject to this Guideline.
 - 1. Any faculty member, student or staff found to have violated this Guideline by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action which may include dismissal, expulsion or termination, or other appropriate sanction.
- D. All faculty and staff members are required to cooperate with investigations of alleged discrimination or harassment.
 - 1. Failure to cooperate may result in disciplinary action up to and including termination.

2. Students are also required to cooperate with these investigations; failure to do so may result in disciplinary action up to and including expulsion.
- E. Because the courts have imposed strict obligations on employers with regard to discrimination and harassment, institutions must take measures to periodically educate and train employees regarding conduct that could violate this Guideline.
1. All employees, including faculty members, are expected to participate in such education and training.
 2. All faculty members, students and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

II. General Statement

- A. It is the intent of the Tennessee Board of Regents that the Board and all of the institutions within the Tennessee Board of Regents System shall fully comply with the applicable provisions of federal and state civil rights laws, including but not limited to;
1. Executive Order 11246, as amended;
 2. The Rehabilitation Act of 1973, as amended;
 3. The Americans with Disabilities Act of 1990, as amended;
 4. The Vietnam Era Veterans Readjustment Act of 1974, as amended;
 5. The Equal Pay Act of 1963, as amended;
 6. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 7. Title IX of the Educational Amendments of 1972, as amended;
 8. The Age Discrimination in Employment Act of 1967;
 9. The Age Discrimination Act of 1975;
 10. The Pregnancy Discrimination Act;
 11. The Genetic Information Nondiscrimination Act of 2008; and
 12. Regulations promulgated pursuant thereto.
- B. The Board of Regents will promote equal opportunity for all persons without regard to race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender

identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by federal or state civil rights law.

- C. Campuses and the Central Office affirm that they will not tolerate discrimination against any employee or applicant for employment because of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, or genetic information, nor will they tolerate harassment on the basis of these protected categories or any other category protected by federal or state civil rights law.
- D. Similarly, the campuses shall not subject any student to discrimination or harassment under any educational program and no student shall be discriminatorily excluded from participation nor denied the benefits of any educational program on the basis of race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law.

III. Discrimination and Harassment

A. Discrimination - Discrimination may occur by:

- 1. Treating individuals less favorably because of their race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law; or,
- 2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

B. Harassment – based on a protected class

- 1. Harassment is conduct that is based on a person's race, color, religion, creed, ethnic or national origin, sex, sexual orientation, gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law that;

- a. Adversely affects a term or condition of an individual's employment, education, participation in an institution's activities or living environment;
 - b. Has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creating an intimidating, hostile, offensive or abusive environment of the individual; or
 - c. Is used as a basis for or a factor in decisions that tangibly affect that individual's employment, education, participation in an institution's activities or living environment.
 - 2. Examples of such conduct include, but are not limited to verbal or physical conduct relating to an employee's national origin, race, surname, skin color or accent, offensive or derogatory jokes based on a protected category, racial or ethnic slurs, pressure for dates or sexual favors, unwelcome comments about a person's religion or religious garments, offensive graffiti, cartoons or pictures, or offensive remarks about a person's age.
 - 3. Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct in the context within which the alleged incident occurs. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.
- C. Examples of sexual harassment - Examples of sexual harassment include, but are not limited to, the following;
- 1. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
 - 2. Promising a work-related benefit or a grade in return for sexual favors;
 - 3. Suggestive or inappropriate communications, email, notes, letters, or other written materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work or living environments;

4. Sexual innuendoes, comments, and remarks about a person's clothing, body or activities;
5. Suggestive or insulting sounds;
6. Whistling in a suggestive manner;
7. Humor and jokes about sex that denigrate men or women;
8. Sexual propositions, invitations, or pressure for sexual activity;
9. Use in the classroom of sexual jokes, stories, remarks or images in no way or only marginally relevant to the subject matter of the class;
10. Implied or overt sexual threats;
11. Suggestive or obscene gestures;
12. Patting, pinching, and other inappropriate touching;
13. Unnecessary touching or brushing against the body;
14. Attempted or actual kissing or fondling;
15. Sexual violence; including rape, sexual assault, sexual battery, and sexual coercion;
16. Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation, gender identity/expression.
 - a. The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment. Campus policies may delineate additional examples.

D. Please note that incidents of sexual violence may constitute criminal acts and as such, investigation and processing by the criminal justice system, local police, campus security and crisis intervention centers may occur in addition to the process developed under this Guideline.

1. Complainant must be notified of his/her right to file a criminal complaint.

IV. Consensual Relationships

- A. Intimate relationships between supervisors and their subordinates and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations.

1. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.
2. Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority (i.e., member of dissertation committee, thesis director, etc.) constitutes a conflict of interest.
3. The faculty member must take steps to remove the conflict by assigning a different supervisor to the student; resigning from the student's academic committees; or by terminating the relationship at least while the student is in his/her class.
4. Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he or she has evaluative or supervisory authority.
 - a. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

V. Procedures

A. General

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, "the Complainant") as well as the party against whom a complaint of discrimination or harassment is lodged (hereinafter "the Respondent"), as required by state and federal laws. Each complaint must be properly and promptly investigated and, when warranted, appropriate disciplinary action taken against the Respondent.
2. The Office of General Counsel shall always be consulted prior to investigation. If institutions have on-campus legal counsel, that office must be consulted. Hereinafter, references to "Legal Counsel" shall mean either the Office of General Counsel or on-campus legal counsel, as appropriate.
3. In situations that require immediate action because of safety or other concerns, the institution may take any administrative action which is appropriate, e.g., administrative leave with pay pending the outcome of the investigation.

- a. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation.
- b. Legal Counsel should be contacted before any immediate action is taken.
- 4. Each employee, applicant for employment and student shall be notified of the name, office, and telephone number of the designated EEO/AA, Student Affairs, Title VI or Title IX officer(s) responsible for assuring compliance with this Guideline, Board policy, and federal law.

B. Filing Complaints

- 1. Any current or former student, applicant for employment, or current or former employee who believes he or she has been subjected to discrimination or harassment at an institution or who believes that he/she has observed discrimination or harassment taking place shall present the complaint to the designated EEO/AA, Student Affairs, Title VI or Title IX officer (hereinafter "the Investigator") responsible for compliance with this Guideline.
- 2. Complaints under Title VI must be brought within 180 days of the last incident of discrimination or harassment pursuant to Guideline G-125. All other complaints must be brought within 365 days of the last incident of discrimination or harassment.
 - a. Complaints brought after that time period will not be pursued absent extraordinary circumstances.
 - b. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made in conjunction with Legal Counsel.
- 3. Every attempt will be made to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any.
 - a. The complaint shall be signed by the Complainant.
 - b. However, when the Complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken.

- c. Complaints made anonymously or by a third party must also be investigated to the extent possible.
- 4. If the complaint does not rise to the level of discrimination or harassment, the Investigator may dismiss the complaint without further investigation after consultation with Legal Counsel.
 - a. The Complainant should be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.
- C. Investigation
 - 1. Legal Counsel shall be notified of the complaint, whether written or verbal, as soon as possible after it is brought to the attention of the Investigator and the investigation will be under the direction of Legal Counsel.
 - a. All investigatory notes and documents shall be attorney work product.
 - b. The Investigator shall notify the President/Director that an investigation is being initiated.
 - 2. When the allegation of discrimination or harassment is against the EEO/AA Officer, Student Affairs Officer, Title VI or Title IX Officer, the President/Director will identify an individual who has been trained in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this Guideline.
 - a. When the allegation of harassment is against the President/Director of the institution, the EEO/AA Officer shall notify the Office of the General Counsel who will assign an investigator who will make his/her report to the Chancellor.
 - 3. When the Respondent is a student, the Student Affairs Office will investigate the complaint in compliance with the procedures outlined in this Guideline.
 - a. If a finding of violation is made, any resulting disciplinary action will be undertaken in compliance with the institutions' student disciplinary procedures.

4. When a student is involved as the Complainant, the Respondent or an individual interviewed, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA) and T.C.A. § 10-7-504(a) (4) which requires that certain student disciplinary records are subject to disclosure pursuant to a public records request.
5. Investigation of complaints against employees of a Tennessee College of Applied Technology (TCAT) shall be initiated by the Vice Chancellor for Tennessee Colleges of Applied Technology or his/her designee.
 - a. In certain circumstances, the lead institution for the TCAT may be asked to conduct the investigation.
 - b. Investigations of complaints made against TCAT students will be undertaken by TCAT Student Services personnel.
 - c. The TCAT Directors are responsible for notifying the Vice Chancellor whenever a verbal or written complaint is made.
6. In consultation with and under the direction of Legal Counsel, the Investigator shall conduct an investigation of the complaint.
 - a. This investigation shall include interviews with both the Complainant and the Respondent, unless either declines an in-person interview.
 - b. The investigation shall also include interviews with relevant witnesses named by the Complainant and Respondent.
 - c. The purpose of the investigation is to establish whether there has been a violation of the Guideline.
 - d. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given information received during the course of the investigation.
7. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties.

- a. However, the Complainant, Respondent and all individuals interviewed shall be informed that the institution has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed.
 - b. Information may need to be revealed to the Respondent and to potential witnesses.
 - c. However, information about the complaint should be shared only with those who have a need to know about it.
 - d. The Complainant and Respondent shall also be informed that a request to inspect documents made pursuant to the Public Records Act may result in certain documents being released.
 - e. A Complainant may be informed that if he or she wants to speak privately and in confidence about discrimination or harassment, he or she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality.
 - f. Additionally, the Complainant shall be given assurances that measures will be taken against the Respondent should there be retaliation against him or her.
 - g. Retaliation is prohibited and should be reported to the investigator immediately.
 - h. Allegations of retaliation must also be investigated pursuant to the procedure set out in this Guideline.
8. The Investigator shall notify in writing the Respondent within five (5) working days of receipt of the complaint.
- a. The Respondent may respond in writing to the complaint within five (5) working days following the date of receipt of the Investigator's notification.
9. If either the Complainant or the Respondent is a student, the Investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.

10. The Complainant, the Respondent and all individuals interviewed shall be notified that any retaliation engaged in connection with the complaint or its investigation is strictly prohibited regardless of the outcome of the P-080 investigation and may, in itself, be grounds for disciplinary action.
11. At any time during the course of the investigation, the Investigator may meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally.
 - a. Either party has the right to end informal processes at any time.
 - b. Mediation will not be used in cases involving sexual assault.
 - c. If informal resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by Legal Counsel, shall be submitted to the President/Director.
12. If informal resolution is unsuccessful, the Investigator shall draft a report summarizing the investigation which shall be sent to Legal Counsel for review.
 - a. Each report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, whether there were any attempts made to resolve the complaint informally, a determination of whether there was a violation of the Guideline, and recommendations regarding disposition of the complaint.
 - b. After review and approval by Legal Counsel, the report shall be submitted to the President/Director within sixty (60) calendar days following receipt of the complaint, absent cause for extending the investigation timeline.
 - c. If the complaint involves a college of applied technology, a copy of the final report should also be sent to the Vice Chancellor for Tennessee Colleges of Applied Technology.
 - d. No working papers, statements, etc. generated in the investigation should be attached to the report.

- e. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to Legal Counsel and written notice to both the Complainant and the Respondent.
- 13. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him or her that he or she is not being accused of a P-080 violation, but that the conduct alleged, had it been substantiated, could be found to violate this Guideline.
 - a. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure.
 - b. It should also be noted that conduct which does not rise to the level of legally actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action against the Respondent.
- 14. The President/Director shall review the Investigator's report, and shall make a final written determination, within a reasonable time as to whether a violation has occurred and, what the appropriate resolution should be.
 - a. After the President/Director has made this determination, the Investigator shall, absent unusual circumstances and after consultation with Legal Counsel, provide both the Complainant and the Respondent with a copy of the determination, along with a copy of the Investigator's report.
- 15. If the investigation reveals evidence that a violation of the Guideline has occurred, the President/Director must take immediate and appropriate corrective action.
 - a. Such action may include meeting with the Respondent and/or the Complainant and attempting to resolve the problem by agreement, except in the case of sexual assault.
 - b. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.

16. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to Legal Counsel.
 - a. However, copies of the President's/ Director's determination, the Investigator's report, the complaint (if it concerns an employee) and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained on campus.
 - b. This file shall be maintained in a location designated by the President.
 - c. If such action was taken, copies of documentation establishing disciplinary action taken against the Respondent, whether an employee or student, shall also be maintained in the Respondent's personnel or student record, as appropriate.
 1. Some documents involved in a P-080 matter may be subject to the Public Records Act and thus open to public inspection.
 2. Other documents may be protected under FERPA, the attorney/client privilege, or attorney work product and would not be releasable.
 3. If a Public Records request is received, Legal Counsel must be consulted prior to the release of any documents.
17. A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

D. Appeal of Decision

1. Because TBR institutions are committed to a high quality resolution of every case, each institution must afford the Complainant and Respondent an opportunity to appeal the President's/Director's decision concerning Respondent's responsibility for the alleged conduct.
 - a. The appeal process shall consist of an opportunity for the parties to provide information to the institution's attention that would change the decision.
 - b. The appeal process will not be a de novo review of the decision, and the parties will not be allowed to present their appeals in person to the President/Director

unless the President/Director determines, in his/her sole discretion, to allow an in-person appeal.

2. The institution shall provide written notice of the appeal process to the parties at the time that the parties are advised of the outcome of the investigation.
3. Either party may send a written appeal to the President/Director within ten (10) working days, absent good cause, of receipt of the President's/Director's determination.
 - a. The appealing party(ies) must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case.
 - b. Failure to do so may result in a denial of the appeal.
4. The President/Director will issue a written response to the appeal as promptly as possible. This decision will constitute the institution's final decision with respect to President's/Director's determination.

VI. Other Applicable Procedures

- A. If the President's/Director's decision includes disciplinary action, the procedures for implementing the decision shall be determined by the applicable policies relating to discipline (e.g., employee grievance/complaint procedure, student disciplinary policies, and academic affairs policies).

VII. Other Available Complaint Procedures

- A. An aggrieved individual may also have the ability to file complaints with external agencies such as the Equal Employment Opportunity Commission (EEOC), the Tennessee Human Rights Commission (THRC), the Office of Civil rights (OCR), and the courts.
 1. Please note that the deadlines for filing with external agencies or courts may be shorter than the deadline established for filing a complaint under this Guideline.

2. Examples of shorter deadlines include, but are not limited to 180 days to file a complaint under Title VI & Title IX, as well as 300 days to file a complaint under Title VII.

Sources

Presidents Meeting: November 14, 1984 and November 16, 1984 AVTS Sub-Council meeting; August 16, 1988; February 14, 1989; November 10, 1992; August 13, 1996; February 13, 2001; August 16, 2005; November 8, 2005; February 13, 2008; February 14, 2012: Changes in Title VI procedures became effective October 1, 2013 (Ratified at President's Meeting, Nov. 5, 2013).

**TBR Statement of Revenues, Expenditures and Changes in
Net Assets**

**CURRENTLY UNAVAILABLE
(Will be sent as an addendum by November 15, 2013)**

ATTACHMENT 6

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Tennessee Technology Center at Lexington
Mr. John Hodgson, Title VI Officer
230 South Broad
Lexington, TN 38351
731.424.0691

Tennessee Technology Center at Jacksboro
Ms. Rita Broyles, Title VI Officer

P.O.419
Jacksboro, TN 37757
423.566.9629

Tennessee Technology Center at McMinnville
Mr. Marvin Lusk, Title VI Officer
241 Vo-Tech Drive
McMinnville, TN 37110
931.474.8324

Tennessee Technology Center at Livingston
Dr. Myra West, Title VI Officer
P.O. Box 219
Livingston, TN 38570
901.828.9525

Tennessee Technology Center at Nashville
Arrita Summers, Title VI Officer
100 White Bridge Road
Nashville, TN 37129
615.425.5530

Tennessee Technology Center at Morristown
Mr. Robert Hodge, Title VI Officer
821 W. Louise Avenue
Morristown, TN 37813-2094
423.586.5771

Tennessee Technology Center at Jackson
John Hodson, Title VI Officer
2468 Westover Road
Jackson, TN 38301
731.424.0691

Tennessee Technology Center at Onieda / Huntsville
Amy West,, Title VI Officer
355 Scott High Drive
Huntsville, TN 37756
423.663.4900

Tennessee Technology Center at McKenzie
Danny Hudson, Title VI Officer
P. O. Box 427
McKenzie, TN 38201
731.352.5364

Tennessee Technology Center at Knoxville
Ms. Carolyn Roach, Title VI Officer
1100 Liberty Street
Knoxville, TN 37919
865.546.5568

Tennessee Technology Center at Murfreesboro
Ms. Judy Henegar, Title VI Officer
1303 Old Fort Parkway
Murfreesboro, TN 37129
615.898.9010

Tennessee Technology Center at Memphis
Diana Wilkerson, Title VI Officer
550 Alabama Avenue
Memphis, TN 38105
901.543.6100

Tennessee Technology Center at Paris
Willie Huffman, Title VI Officer
312 S. Wilson
Paris, TN 38242
731.644.7365

Tennessee Technology Center at Newbern
Donna Hastings, Title VI Officer
340 Washington Street
Newbern, TN 38059
731.627.2511

Tennessee Technology Center at Ripley
Belinda Douglass, Title VI Officer
127 Industrial Drive
North Industrial Park
Ripley, TN 38063
731.635.3368

Tennessee Technology Center at Pulaski
Mr. Tony Creecy, Title VI Officer
P.O. Box 614
Pulaski, TN 38478
931.424.4014

Tennessee Technology Center at Whiteville
Ms. Carolyn Beverly, Title VI Officer
P.O. Box 489
Whiteville, TN 38075
731.254.8521

Tennessee Technology Center at Shelbyville
Ivan Jones, Title VI Officer
1405 Madison Street
She

ATTACHMENT 7

TENNESSEE BOARD OF REGENTS Small, Minority, and Women Owned Business Report (SUMMARY) July 1, 2013 - June 30, 2014

	<u>SOLICITATIONS</u>	<u>RESPONSES</u>	<u>AWARDS</u>	<u>AMOUNT</u>
REPORTING CLASSIFICATION:				
Minority Owned	4,318	2,915	2,647	\$4,098,149
Women Owned	8,557	7,008	6742	\$11,982,788
Disabled Veteran (20%+)	217	127	100	\$2,484,466
ETHNICITY:				
African American	1,800	970	885	\$1,295,310
Hispanic American	445	312	274	\$533,858
Asian American	1,064	791	699	\$1,507,410
Native American	1,007	841	786	\$761,570
Total Ethnicity	4,316	2,914	2,644	\$4,098,149
SMALL BUSINESS:	25,329	21,464	21001	\$30,613,020

NOTES:

1. Vendors are reported in one category and may not be duplicated between categories.
2. The numbers are compiled from data submitted quarterly by each TBR institution and are based on information maintained in the institution's Purchasing Department regarding bids and awards.

Guideline G-130**Subject: Limited English Proficiency Policy (LEP)****Policy/Guideline Area**

I. Access

A. The Department of Justice defines persons with LEP as "those individuals who have a limited ability to read, write, speak or understand English." Because English is not the primary language of these individuals, they may have a limited ability to function in a setting where English is the primary language spoken, such as a TBR institution.

B. TBR and its institutions may encounter LEP persons in the form of international students, faculty, staff and other individuals seeking services and access to programs.

C. There are specific TBR policies and guidelines that deal with the ability to read, write, speak or understand English, including:

1. Policy 2:03:00:00 "Admissions" - provides the basic English requirement for entering students.

2. Guideline A-100 "Learning Support" - outlines learning support opportunities to assist students in reading and writing.

3. Policy 2:08:30:00 "Admission and Delivery of Services to International Students and for the Employment and Delivery of Services to International Faculty and Academic Staff at TBR Institutions" - provides requirements related to English proficiency and the provision of professionally staffed ESL programs if the institution admits students not meeting those requirements.

D. The provisions below apply to other situations involving persons with LEP.

1. TBR System Office and campus staff will post services available to LEP persons in highly visible areas and also provide trained personnel to provide meaningful services and access to programs for these persons.

2. TBR System Office and campus staff will promptly identify the language and communication needs of the LEP person who makes himself or herself known to the institution.

3. TBR system Office and campus staff will then have options to address the LEP person's needs.

a. These options may include but are not limited to:

(1) Using language identification cards (or "I speak cards") or posters to determine the language;

(2) Maintaining an accurate and current list showing the name, language, phone number and hours of availability of a staff interpreter, if applicable;

(3) Contacting the appropriate staff member to interpret, in the event that an interpreter is needed and/or if an employee who speaks the needed language is available and is qualified to interpret;

(4) If necessary, obtaining an outside interpreter if a staff interpreter is not available or does not speak the needed language.

E. When translation of vital documents is needed, the appropriate Title VI Coordinator will submit documents for translation into frequently-encountered languages to the responsible staff person or interpreter. Documents being submitted for translation must be in final, approved form.

F. TBR Title VI Coordinators will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment used for the delivery of language assistance, complaints filed by LEP persons, and feedback from the public and community organizations.

G. Individuals who believe they have not been provided reasonable access to LEP services may file a complaint with the appropriate Title VI Officer within 180 days after the last incident of denial.

Sources

New Guideline approved, Presidents' Meeting November 7, 2012.

Guideline G-125

Subject: Process for Filing Title VI Complaints

I. Introduction

- A. Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. 42 U.S.C. § 2000d. It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title VI and Regulations issued pursuant thereto.

II. Complaints

- A. Any current or former student, applicant for employment, or current or former employee or any contractor or vendor who believes he or she has been subjected to discrimination or harassment based on race, color or national origin at an institution or who believes that he/she has observed discrimination or harassment based on race, color or national origin taking place may submit a Title VI complaint.
- B. Complaints must be brought within 180 days of the last incident of discrimination or harassment.
 - 1. Complaints brought after that time period will not be pursued absent extraordinary circumstances.
 - 2. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period must be made in conjunction with Legal Counsel.
- C. Complaints must be filed with the Title VI Coordinator for the Institution. The complaint will be handled by the Title VI Coordinator or their designee.

III. Procedure

- A. Complaints brought under Title VI will be handled in accordance with the procedures for investigating complaints set forth in Guideline P-080.

IV. Alternative Complaint Procedures

- A. An aggrieved individual may also file a Title VI complaint with the Tennessee Human Rights Commission or the Department of Education, Office of Civil Rights (OCR).

Sources

Effective October 1, 2013 (Ratified at Presidents Meeting, Nov. 5, 2013)



Discrimination/Harassment Complaint Form

Use blue ink when signing this form.

TENNESSEE BOARD OF REGENTS

Complaining Party's Name			
Address			
Email Address		Home Phone	
Work Phone		Mobile Phone	
TBR Institution or Location			
Name(s) of person(s) accused of wrongdoing			
Describe all actions of person(s) named above. Be as detailed as possible; include the date, time and place of each event(s) or conduct involved. Attach additional pages, if needed.			
Why do you think this person treated you this way?			
What effect has this had on you?			
Names of witnesses to the above-described events. Include phone number(s), if known			
Names of anyone with whom you discussed the above-described events. Include phone number(s), if known			
How would you like this matter resolved?			

Employee Signature		Date	
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Return Form to:
Tennessee Board of Regents
Office of Human Resources
1415 Murfreesboro Road, Ste 346
Nashville, TN 37217

Form: OESI-AD-APXA Revision: 06/17/2013

Guideline P-110

Subject: Employee Grievance/Complaint Guideline

I. APPLICATION OF GUIDELINE

A. This Guideline applies to employees of an institution/center and has been developed to assist universities, community colleges, technical institutes and Tennessee Technology Centers in drafting procedures for addressing grievances and complaints filed by institution/center employees. There shall be two types of procedures, which each institution/center shall address through policies developed pursuant to this Guideline. The two types are: 1) grievances, which are subject to committee review; and, 2) complaints which must be resolved without committee review.

B. The following is a minimum which must be incorporated in the institutional/center grievance and complaint procedures. The procedures may vary from campus to campus, but may not establish any right to a hearing except as set out herein.

C. This Guideline has no application to a termination procedure initiated against a tenured faculty member under TBR policy No. 5:02:03:60 Section V (I), or 5:02:03:70 Section VI (G)(2). This Guideline is not to be used for support staff employees who are demoted, suspended without pay, or terminated. In accordance with Tenn. Code Ann. § 49-8-117, *Support Staff Grievance Procedure*, support staff employees who are demoted, suspended without pay, or terminated must follow the grievance process contained in Guideline P-111.

D. An employee may choose to utilize the procedure for review by the grievance committee established pursuant to this Guideline in the following situations:

1. actions relating to the suspension of employees for cause or termination in violation of an employment contract which fall under TBR Policy No. 1:06:00:05 (Cases Subject to TUAPA), or TBR Policy No. 5:02:03:60 Section V (I)(2) or 5:02:03:70 Section VI (G)(2)(b) (suspension of tenured faculty) or TBR Policy No. 5:02:03:10 Section III (O)(2) (suspension of tenured faculty at TTCs); or,
2. actions involving hearings requested pursuant to TBR Guideline P-080 Section VI (D).

E. The institution/center may choose to utilize the procedure for review by the grievance committee (established pursuant to this Guideline) when resolving a complaint initiated pursuant to TBR Policy No. 5:02:02:10 (Faculty

Promotion at TTCs), 5:02:02:20 (Faculty Promotion at Universities), or 5:02:02:30 (Faculty Promotion at Community Colleges).

II. DEFINITIONS

A. GRIEVANCE – (Committee review available) – An employee may only grieve those matters defined in 1. – 3. below. If the grievance involves or is based on unlawful discrimination or unlawful harassment, the process set out in Guideline P – 080 must be utilized. A grievance may result from any actions the institution/center has taken against the employee which:

1. violates institution/center or TBR policy, or involves an inconsistent application of these same policies;
2. violates any constitutional right. The most likely areas of concern are the First, Fourth or Fourteenth Amendment of the federal constitution when that action hampers free speech, freedom of religion, the right to association, provides for improper search and seizure, or denies constitutionally required notice or procedures, or;
3. violates a federal or state statute not covered by TBR Guideline P-080.

B. COMPLAINT – (Committee review not available) – A complaint is a concern which an employee wants to discuss with supervisory personnel in an effort to resolve the matter. Personnel actions such as performance evaluations, rates of pay, position re-classifications, or position terminations due to reduction in force do not fall under the definition of complaint.

C. EMPLOYEE -For purposes of the grievance and complaint procedures, an employee is defined as an administrator, faculty member (though not including faculty on adjunct contracts), professional, clerical and support staff personnel. Probationary employees are also included in this definition. Student workers and graduate assistants are not included in the definition of employee.

III. APPLICABILITY OF PROCEDURES

A. All employees shall have access to the grievance/complaint procedure as long as the process was initiated within the time frame set out in the procedure.

B. All employees are encouraged to discuss any problem with their supervisor or unit head prior to utilizing any grievance/complaint procedure. The institution/center should attempt to resolve each grievance/complaint at the lowest possible level.

IV. RESPONSIBILITY FOR IMPLEMENTATION

A. The President/Director of the institution/center has ultimate responsibility for implementation of the grievance and complaint procedures, and provides the final decision at the institutional/center level.

B. Administrative, academic, and supervisory personnel are responsible for insuring that they inform and make available to all employees information concerning their right to file a grievance or complaint and their right to be protected from retaliation.

C. Retaliation- No employee shall retaliate or discriminate against another employee because of the latter employee's filing of a grievance or complaint. In addition, no employee shall coerce another employee or interfere with the action of another employee in the latter employee's attempt to file a grievance or complaint. Administrative, academic and supervisory personnel should also be informed that they are responsible for ensuring that the employee is free from retaliation, coercion and/or discrimination arising from the employee's filing of or intent to file a grievance or complaint.

V. COMPLAINT PROCEDURE

A. The complaint procedure should state a time limit within which a complaint must be presented after the date the employee received notice or becomes aware of the action which forms the basis of the complaint. If the complaint arises from a repeated or continuing occurrence, the time limit begins from the date of the last such occurrence. Any complaint not presented within the time limit is waived and shall not be considered. Once a final determination is made, the employee may not later present the same complaint in an attempt to gain a more favorable outcome.

B. The institution/center policy shall indicate with whom a complaint is to be filed. It should also indicate that a complaint must be submitted in writing.

C. Resolution of complaints at a minimum requires the institution/center to: 1) allow the employee to present facts and/or materials; 2) investigate the dispute; and, 3) attempt to find a solution. The President/Director or his/her designee shall be the final decision maker. Complaints do not include a right to any type of hearing, adversarial proceeding, nor the right to appeal to the Chancellor.

VI. GRIEVANCE PROCEDURE

A. The grievance procedure should begin at the lowest appropriate supervisory level.

B. The grievance procedure should state a time limit within which a grievance must be presented after the date the grievant received notice or becomes aware of the action which forms the basis of the grievance. If the grievance arises from a repeated or continuing occurrence, the time limit begins from the date of the last such occurrence. Any grievance not presented within the time limit is waived and shall not be considered.

Once a final determination is made, the grievant may not later present the same grievance again in an attempt to gain a more favorable outcome.

C. The institution/center shall require written grievances. However, the institution/center may choose to allow the grievant to present his/her grievance orally in the first one or two steps in the procedure.

D. The institution/center shall specify that written grievances are to be filed with the appropriate decision-maker, or in the alternative, shall specify that all written grievances be filed in a central location with the appropriate decision-maker being notified of the grievance.

E. The grievance, whether oral or written, should be stated in reasonable and temperate terms.

F. Written grievances should contain, at a minimum, the following information:

1. The grievant's name and job title.
2. The department in which the grievant is employed.
3. Explanation of the grievance citing the specific policies or statute claimed to have been violated or inconsistently applied, or the constitutional right abridged.
4. Names of persons with whom the grievance has previously been discussed and date on which the grievance was discussed with each.
5. Corrective action desired.
6. Date the written grievance is filed.
7. Signature of the grievant.

G. Institutions may wish to provide pre-printed forms asking for the desired information.

H. A written grievance may be returned to the grievant for additional information or restatement in clearer terms.

I. The grievant should be informed that s/he is entitled to be accompanied by an advisor at each step of the grievance procedure; however, the advisor may not act as an advocate but may act as an advisor only. Campuses may require the advisor to be an employee of the institution/center.

J. The person charged with making the decision at each step should be given the responsibility and authority for conducting a thorough and independent investigation. Consideration may be given to information and materials gathered at previous steps.

K. The decision should be based on full and fair consideration of all pertinent facts and circumstances.

L. The procedure should include time limits within which a grievant dissatisfied with a decision must take the grievance to the next highest step. The decision-maker at each step should also be given a time limit for notifying the grievant of the decision. The President/Director should be authorized to grant reasonable extensions of the time limits upon a showing of good cause.

M. Employees should be given the opportunity to pursue grievances pursuant to this policy during regular business hours. Each institution or school should insure that all parties have access to all persons, places, and official records for information necessary to the determination and processing of a grievance within specified time limits. This access shall not interfere with normal work-flow of the institution.

N. Each institution/center policy should insure that a grievance can be withdrawn in writing at any stage of the process.

VII. GRIEVANCE COMMITTEE

A. The institution/center shall establish a grievance committee to advise the President/Director on those grievances which could not be resolved and which reach the final decision-making level. Grievance committees are convened only at the request of the grievant for review at the next higher level.

B. The President/Director shall determine the details of the grievance committee such as appointment, committee membership, the term of the committee members, etc. The committee appointment process shall allow for peer representation taking into account the distinctions between tenured faculty and non-faculty. The institution/center may choose to develop a pool of committee members who can receive training about the institutional grievance procedure. The President/Director may then pick a committee from that pool in order to hear an individual grievance. A standing committee of the institution/center may also be utilized. Separate committees may be established for faculty and non-faculty grievances. The TTCs may utilize committees developed from a statewide or region-wide pool.

C. A system of selecting members of the committee should seek to make appointments which will ensure that committee members will be disinterested in the outcome. Any committee member selected who has a particular interest in the outcome of the decision should be replaced with an alternate to avoid a biased decision. Every effort should be made to include minorities, i.e. ethnic minorities and women, in the composition of the committee.

D. The number of individuals on the committee should be small enough to be efficient. An odd number is recommended. It is also recommended that a chairperson be selected for each committee.

E. While the committee may review the material and decisions of previous decision-makers in the process, it should conduct a review of the relevant facts. In order to do so, it should have the power to receive evidence from the grievant, gather evidence from other sources and call witnesses.

F. The burden of proof necessary to establish the validity of a grievance (a violation of law, policy or constitutional right) is on the grievant and must meet a preponderance of the evidence standard.

G. The committee may allow all witnesses to be present at one time; or in the alternative, may allow the committee to hear each witness, including the grievant, separately. In any event, the grievant should be allowed to present any

pertinent evidence to the committee and to have the committee call those witnesses who have testimony pertinent to the decision.

H. The committee shall make a written report of its recommendation and reasons supporting its recommendation to the President/Director. The President/Director may then adopt the committee's recommendation, in whole or in part, or may make his/her decision independent of the committee's findings.

I. The grievant shall be provided a copy of the Committee's report along with the President's/Director's decision.

J. Grievances which are processed through the grievance committee and upon which the President/Director has made a decision are appealable to the Chancellor only where the grievance falls within the parameters set out in TBR Policy 1:02:11:00.

VII. MAINTENANCE OF RECORDS

Copies of written grievances and complaints, and accompanying responses and documentation should be maintained at a specified location(s) at the institution/center for at least three (3) years. If a finding adverse to the grievant/complainant is made, the finding shall be maintained in the grievant/complainant's personnel file.

Source Presidents Meeting: August 18, 1987; May 16, 1989; August 21, 2001; February 13, 2002; February 13, 2008

Guideline P-010**Subject: Personnel Transactions and Recommended Forms**

The purpose of this guideline is to supplement provisions of the Tennessee Board of Regents General Personnel Policy (No. 5:01:00:00), as it relates to personnel transactions, procedures for campus appointments, budgetary and position considerations, required forms for implementation procedures, processing of forms by Central Office, employment agreements, contracts, letters of agreement, records and reports. The guideline and attachments are applicable to all institutions and technology centers governed by TBR. For purposes of this guideline, all technology center director responsibilities shall be coordinated through the Vice Chancellor for the Tennessee Technology Centers.

Consistent with the general personnel policy, any exceptions to this guideline are subject to approval by the Chancellor.

I. Personnel Transactions

Each president and technology center director is expected to follow Board policies, affirmative action plans, and fair employment practices when making appointments. Appointments requiring the Chancellor's approval will be reviewed in light of these expectations. All appointments, regardless of salary, including promotions and transfers, must be reviewed and certified by the institutional Affirmative Action Officer prior to action. Other appointments not requiring approval of the Chancellor will be reviewed periodically by the System Affirmative Action Officer to ensure compliance. Technology center directors are required to receive prior approval from the Vice Chancellor for Technology Centers for any change in personnel classification, compensation, job description or assignments.

A. Appointments Requiring Approval by the Chancellor

No offer of employment can be made for positions requiring the Chancellor's approval until the appointment form has actually been signed by the Chancellor or his/her designee and the monitor, where required.

All institutions must submit the following positions for approval:

1. All vice presidents (academic, business, student affairs, etc.) including all interim appointments.
2. Academic deans, academic department and/or division heads, directors, of the centers of emphasis and excellence (including those officers who varying titles have line responsibility for administration of academic faculty or staff at the academic disciplinary unit level, including interim appointments.
3. Appointments, promotions, and or transfers to positions with salaries in excess of \$100,000 at universities and \$100,000 at community colleges ; and of non-faculty (the promotion process for faculty is governed by TBR Policies 5:02:02:10, 5:02:02:20, and 5:02:02:30), and/or transfers to positions with salaries in excess of \$100,000 at universities and \$100,000 at community colleges; and
4. And any other positions which may be designated by the Chancellor.

B. Appointments Not Requiring Approval by the Chancellor

All appointments not listed in I.A. may be approved at the institution by the Director, the President or any properly approved designee. The hiring procedures outlined in the following sections will be followed with the records being maintained at the institution. Records must be maintained as described in Section VI, A.2. of this guideline.

1. The director or president shall be responsible for assuring compliance with the guideline.
2. The institutional Affirmative Action Officer shall be responsible for monitoring the recruiting and employment process to assure compliance with the guideline and the institution's Affirmative Action program and objectives.
3. For Affirmative Action purposes, institutional records will be reviewed periodically by the System Affirmative Action Officer
4. All promotions and transfers not requiring approval of the Chancellor must be approved by the president/director and reviewed and certified by the institutional Affirmative Action Officer in compliance with TBR Policy 5:01:00:00, General Personnel Policy.

C. Minimum Requirements for All Campus and Central Office Appointments

The following actions or procedures are mandatory at all institutions, to

1. Establish an Affirmative Action Plan which sets goals for all categories of employment;
2. Develop appropriate recruitment and selection procedures to ensure fairness in employment;
3. Determine in a discussion with the Affirmative Action Officer whether the institution has met the affirmative action goal for the area or department (job group in which the vacant position occurs). Even if the institution has met the overall institutional goal in an employment category, i.e., executive/administrative/managerial; faculty;

professional non-faculty; secretarial/clerical/technical and paraprofessionals; skilled crafts; service/maintenance, there may be a goal for the area or department (job group) in which the vacant position is located which has not been met. For example, the overall institutional faculty goal of 4.5% black representation has been met, but the vacancy is in the job group of Arts and Sciences, Availability data in Arts and Sciences supports the affirmative action plan's goal of 7.0% black representation, which is higher than the overall institutional goal. In this case, the efforts to recruit for the Arts and Sciences position will be directed toward qualified black candidates since the availability data shows the applicant pool should contain some qualified black candidates. A second example relates to the availability of women in the particular job group vacancy. The total institutional faculty goal for women is 40%, but a higher number of women are available in the particular job group category. Therefore, in both examples cited above affirmative action recruitment must occur. In summary, the institution has an obligation to use the availability figures applicable to the particular vacancy to recruit qualified minorities.

4. Prior to taking any recruitment action, the person directing the hire and/or the search committee must submit to the Affirmative Action Officer a written recruitment plan. There may be a standard plan for any EEO category which has been approved in advance. EEO categories 4, 5, 6, and 7 may be more easily standardized. There may be a need for occasional modification to this standard plan, depending on the nature of the position and the availability data. The plan includes, but is not limited to:
 - a. the proposed job description, which has been reviewed by the institutional Affirmative Action Officer;
 - b. method of directing the hire, i.e., individual supervisor or search committee.
 - c. composition of the search committee and responsibilities of the members, i.e., direct contacts, references, interviews, etc.;
 - d. an advertising plan, which provides the following:
 - i. advertisement of the position on bulletin boards, and/or in appropriate publications, and/or newspapers and/or professional discipline-specific journals and/or the Tennessee Employment Security Office; and/or the internet
 - ii. requests for nominations, from professional organizations, discipline-related groups, and organizations devoted to leadership training for the position;
 - iii. diverse membership on all search, selection, or advisory committees,

when practicable; and,

iv. direct contacts to assure that underrepresented groups are aware of the vacancy and are encouraged to apply.

5. Approval of the recruitment plan must be granted by the Affirmative Action Officer prior to the commencement of the recruitment process.
6. The applicant pool must generally reflect the availability data for the defined vacancy in that discipline or field as determined by the appropriate job group in the institutional affirmative action plan. Direct contacts will be required to assure the diversity of protected groups in the applicant pool.
7. The Affirmative Action Officer must review all applicant pools and approve their composition prior to the scheduling of interviews. Upper level hires as defined in Section I.A.2, require the submission of Form A-1, Certification of the Search Pool, to the Vice Chancellor for Academic Affairs or the System Affirmative Action Officer as outlined in Section III of this Guideline.
8. After a candidate has been identified as a possible hire for positions defined in Section I.A., Form A-2, Approval of Appointment, must be submitted to the Vice Chancellor for Academic Affairs or the Assistant Vice Chancellor for Human Resource Development as outlined in Section IV of this Guideline.
9. In the case of appointments of adjunct faculty, equal employment opportunity efforts must include advertisement to establish and build diverse pools from which adjunct employees are chosen.

IMPORTANT: IF AN INSTITUTION HAS MET ITS AFFIRMATIVE ACTION GOALS, EQUAL EMPLOYMENT OPPORTUNITY IS REQUIRED. RACE OR SEX CANNOT BE USED AS A PLUS FACTOR IN HIRING. HOWEVER, AFFIRMATIVE ACTION EFFORTS ARE APPROPRIATE IN THE RECRUITMENT PROCESS TO ASSURE A REPRESENTATIVE POOL. DISCRIMINATION ON THE BASIS OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE, HANDICAPPED STATUS, VETERAN STATUS, OR OTHER ILLEGAL BASIS IS A VIOLATION OF LAW.

10. The Tennessee Board of Regents believes that it is important to check references to limit employer liability, verify information and reduce cost of rehiring and retraining. Checks will produce authenticity of information as it relates to such areas as work history, credential problems and criminal backgrounds.

Each campus shall conduct appropriate and timely checks in conjunction with each employment offer. As an option, a campus may choose to participate in a system wide contract with a third party vendor who conducts background screening and

checks. Campuses shall develop procedures which will include the specific types of checks and specific positions included. The procedures will be forwarded to the central office for review and approval prior to implementation of the program.

When using the third party vendor, the campus shall notify the applicant that a background check will be conducted prior to conducting the background check.

II. Budgetary Considerations

A. Pursuant to Section B.1. of the General Personnel Policy (5:01:00:00), where a transfer of funds is necessary for appointments with compensation in excess of funds available, the transfer is subject to confirmation by the Chancellor. No approval is necessary unless the transfer of funds is from one functional area to another; adjustments of line item salary amounts within a functional area may be made by the president or technology center director if sufficient funds are available, subject to applicable guidelines and limitations. Where a transfer of funds between functional areas is necessary, the president or technology center director should submit a letter of recommendation to the Chancellor identifying the amount and source of transfer.

B. Pursuant to Section B.3 of the General Personnel Policy (5:01:00:00), any new administrative positions and major changes in administrative organization must be approved by the Chancellor. If the proposed position or organizational change is submitted as part of the proposed operating budget or October 31 revision, it should be identified, justified, and documented, but separate approval is not required. If the proposed position or organizational change does not coincide with the budget cycle, it should be recommended by the president or technology center director in the form of a letter to the Chancellor which includes a full description, justification, fiscal implications, and other pertinent information. The technology centers follow the same basic procedure as outlined above; however, the director shall submit the recommended change and justification on TBR TTC Form D-1 to the Vice Chancellor for Technology Centers.

III. Required Forms for Implementation of Procedures for Approvals

Information to support transactions that require the approval of the Chancellor or his/her designee is requested in Forms A-1 and A-2. Approval for the certification of the search pool for upper level administrative vacancies is shown on **Form A-1**. Where a search committee is formed to search for a University or college administrator at the level of dean or higher, the search committee **MUST** be racially diverse. Where a search committee is formed, candidates for hire must first be screened by the search committee before an offer can be extended. The Chair of the search committee must certify that each candidate considered by the committee meets or exceeds the criteria published in the job description (See Form A-1 Below). Supporting documentation for Form A-1 vice presidents and upper level academic positions must be submitted to the System Affirmative Action Officer.

Approval for an appointment recommendation is shown on **Form A-2**. Assurance by the Affirmative Action Officer that an approved process has been followed and the qualified other-race applicants have been contacted and fully considered is mandatory. Supporting documentation for vice presidents and upper level academic positions must be submitted to the Assistant Vice Chancellor of Human Resource Development.

IV. Central Office Procedure for Processing of Form A-2

A. The Office of Human Resources will date stamp and log all recommendation portfolios received. The Office of Human Resources will verify that the portfolio contains the following: (a) all information required on the A-2 form; (b) vitae for: the candidate recommended, all candidates interviewed, and all final candidates from which interviewees were chosen who are from an underutilized group for all institutions; and, (c) all advertisements for the position. If a portfolio is determined to be incomplete, the respective office will communicate with the campus Affirmative Action Officer in the interest of completing it.

For all appointments, if warranted because of significant omission in the portfolio, the Vice Chancellor for Academic Affairs or the Assistant Vice Chancellor for Human

Resource Development will secure information from the campus to certify completeness of the portfolio. No action to approve the recommendation will be taken by TBR staff until the portfolio is complete.

B. The Vice Chancellor for Academic Affairs or the Assistant Vice Chancellor for Human Resource Development, after reviewing portfolios, will approve, disapprove, or defer decision pending some specified course of action.

C. Once final action has been taken on the recommendation portfolio, the complete document and record of action will be transmitted for filing to the Office of Human Resources.

V. Transaction Forms, Employment Agreements, Contracts and Letters of Agreement

A. Transaction Forms

1. Section V.B. of this guideline provides recommended transaction forms to be used for all personnel transactions, unless alternate forms have been approved by the Chancellor.
2. Institutions and technology centers may develop internal personnel transaction forms for administrative purposes. These forms may relate to management information system and contain fiscal and personnel data deemed necessary by the institution or technology center.

B. Employment Agreements, Contracts and Letters of Agreement

Pursuant to Section B.2. of the General Personnel Policy (5:01:00:00), the Chancellor must approve employment agreements, contracts, and letters of agreement used in the appointment and employment of campus personnel. Approved provisions for personal, professional, consultant, and dual service agreements are addressed in System Guideline G-030. Each institution and technology center may modify the forms or develop alternative and additional forms; however, any forms with provisions substantially different from the recommended forms should be submitted for review and approval by the Office of the Chancellor. The EEO tagline must be included on all forms. The language concerning the Drug Free Workplace Act must be included on all initial employment contracts. In order to comply T.C.A §49-7-133 the following sentence must be included on all contracts: "It is a Class A misdemeanor to misrepresent

academic credentials.” Attached are the following personnel transaction forms, which are recommended for the use of institutions and technology centers:

Forms F-1 through F-8 are for use in connection with the employment of faculty; Form G-1 for use in connection with the employment of graduate assistants/graduate instructors; Forms S-1 through S-4 are for use in connection with the employment of all personnel other than faculty; and Form D-1 is for use in requesting approval of a change in personnel status of a TTC employee. Form E-1 is for use in connection with the employment of all personnel.

Following are explanatory notes concerning the use of the recommended forms:

Forms F-1, Notice of Tenure-Track Appointment and Agreement of Employment for Faculty, is recommended for the initial employment of any faculty member in a tenure-track appointment. Designate the salary rate by crossing through the word "monthly" or "annual" as appropriate, and designate whether an academic or fiscal year appointment. Also, designate the appropriate beginning and ending months for the pay period as found in paragraph 2. Paragraph 8 should include any special conditions concerning the appointment, such as the policy requirement for separate contracts or agreements with regard to patents or copyrights, or such as any credit for prior service which is agreed to by the institution or technology center [not to exceed three (3) years]. The same form may be used for the re-employment of probationary faculty who are re-appointed in tenure-track appointments following a break in service. In this situation, execution of the forms should be timed in conformance with the institution's or technology center's policy on notice of non-renewal, and specification of the number of years creditable service should be included in paragraph 8.

Form F-2, Notice of Renewal of Tenure-Track Appointment for Faculty, should be sent to all faculty on tenure-track appointments whose appointments will be renewed and where no new special conditions concerning the appointment are necessary. Even though renewal occurs automatically in the event a tenure-track appointee does not receive notice of renewal by the proper date, it's required that renewal occur by

affirmative action rather than default, and that this notice be sent no later than the institution's or technology center's last date for notice of non-renewal. A signature line for the faculty member has been added which must be signed and returned to be valid and binding. You may wish to incorporate the content of Form E-1 when issuing this form rather than sending the Notice of Recommended Salary at a later time; if so, you must make any necessary changes. Designate whether an academic or fiscal year appointment.

Form F-3, Notice of Renewal of Tenure-Track Appointment and Amendment of Agreement of Employment for Faculty, should be used to renew a tenure-track appointment where an express amendment to the terms of the initial appointment, Form F-1, is deemed necessary. You may wish to incorporate the content of Form E-1 when issuing this form rather than sending the Notice of Recommended Salary at a later time; if so, you must make any necessary changes. Designate whether an academic or fiscal year appointment.

Form F-4, Notice of Award of Tenure, is used to notify an employee that tenure has been awarded. A notice of tenure must be given, and Form F-4 is a model of one you may use. As indicated, you should note in which department, division, or academic organizational unit the person is awarded tenure. You may wish to develop a letter to be used in lieu of this notice without TBR approval.

Form F-5, Notice of Non-Renewal of Appointment, is a notice of non-renewal. This notice must be sent prior to the required date for notice of non-renewal, and should be hand delivered or sent certified mail, return receipt requested; consult the institution or technology center policy or practice for the method for which notice will be effected. Also, refer to TBR Policies 5:02:03:10, 5:02:03:60, and 5:02:03:70 concerning when notices should be given.

Form F-6, Notice of Temporary Employment and Employment Agreement for Faculty, should be used for the employment of all full-time non-tenure track faculty on temporary appointments (Form F-8 should be used for employment of adjunct faculty and faculty

for the summer term). Regular part-time faculty percentage (60% appointment) may be listed as a condition in paragraph 9. Designate the salary rate by crossing through the word "monthly" or "annual" as appropriate. Renewal or non-renewal of these appointments will not be subject to the same conditions as for tenure-track appointments, and the form expressly provides that any renewal is subject to a subsequent written agreement. The same form would be used each year for employment of temporary full-time faculty for more than one year, not to exceed three years. Note that this form contains a 30-day notice provision in paragraph 8.

Form F-7, Notice of Term Appointment and Agreement of Employment for Faculty, is a term appointment for full-time non-tenured faculty and applies only to the community colleges, technical institutes and technology centers. This form was devised to help meet the special problems of career/vocational programs where markets are volatile and changing - examples: computer programming, legal assistant program, some allied health programs. In order to decide whether to use a temporary agreement, F-6, or a term agreement, F-7, look at the projected need for the program. The term agreement is to be used when the projected need is beyond three years, but not for a sufficient time to create a tenure-track position. Designate the salary rate by crossing through the word "monthly" or "annual" as appropriate.

Form F-8, Notice of Employment of Adjunct Faculty, will be used for the hiring of adjunct faculty and summer term faculty. Adjunct faculty are temporary appointments based on demand each semester, may be full or part-time and are not eligible for employment benefits. The method of salary payment should be specified. No notice provision has been included. For regular faculty, the institution should cross out paragraph 4 and have the parties to the agreement initial. For tenured faculty teaching during the summer, the institution should cross out paragraphs 4 and 6 and have the parties initial.

Form G-1, Notice of Agreement of Employment for Graduate Assistant/Instructor, will be used for the hiring of graduate assistants/graduate instructors on a temporary

basis. The method of payment, length of the appointment, and whether full- or part-time should be specified.

Form S-1, Notice of Appointment and Agreement of Employment, should be used for all regular staff except faculty. Notices of renewal and non-renewal are not necessary for these appointments, and the appointments are subject to termination at any time by the institution or technology center (see paragraph 4). Designate the salary rate by crossing through the word "month" or "year" as appropriate. Please note the option to add additional language to paragraph 2. Such statements need not be included if the employee is put on notice of this practice through employee orientation or other employee information documents given at the time of initial hiring.

Form S-2, Notice of Modified Fiscal Year Appointment and Agreement of Employment, should be used to appoint regular administrative, clerical and support staff to modified fiscal year appointments. Fill in the blank in paragraph 3 as appropriate. Designate the salary rate by crossing through the word "month" or "year" as appropriate.

Form S-3, Notice of Temporary Employment and Agreement for Non-Faculty Administrative/Professional and Clerical/Support, will be used for the hiring of non-faculty on a temporary basis for employees who will work longer than 60 days and who do not work on an "as needed" basis. The method of salary payment should be specified.

Form S-4, Notice of Termination, is the form notice of termination for non-faculty personnel and provides no reason for termination whatsoever. Institutions and technology centers may wish to provide notice of the opportunity for an oral statement of the reason similar to that specified in Form F-5 for faculty. It is assumed that employees should be aware of the reasons for termination under an effective personnel system. Form E-1, Notice of Recommended Salary, should be used to notify all personnel of the recommended salary for the ensuing academic or fiscal year. Notice of the recommended salary is not included in the notices of renewal for faculty

since the recommended salary may not be known at the time of such notices. However, you may wish to add the language of this form to Forms F-2 and F-3.

Form V-1, Statement of Understanding/Agreement between Institution and Volunteer, will be used for volunteer workers. In order for a volunteer worker in an institution supported program to be eligible for reimbursement of the costs of defense in the event of a claim arising out of their actions, the institution is required by TCA 8-42-101(3)(B) to register the name of the volunteer with the Tennessee Board of Claims. (See attachment to Form V-1.) If the institution fails to register the volunteer and the state pays attorney fees or a judgment based on the volunteer's actions, cost and awards will be funded through the institution's budget. In addition, if the volunteer is a medical professional providing direct health care as a volunteer, he/she is only considered a "state employee" under the defense reimbursement provisions for purposes of medical malpractice.

Form D-1 is addressed above.

Institutions and technology centers are advised to exercise extreme caution in connection with employment letters to personnel and any cover letters which are used to transmit personnel transaction forms, to ensure against inconsistent statements or commitments. Moreover, all personnel transactions at the institutions and technology centers shall comply with the principles and provisions of TBR policy on equal employment opportunity and affirmative action (5:01:02:00).

VI. Transaction Records and Reports

A. Transaction Records

2. Institutions and technology centers shall develop and maintain adequate records to document all personnel transactions, including transactions which do not require the approval of the Chancellor.
3. As provided in Section H.1. of the General Personnel Policy (5:01:00:00), all transaction records for an employee must be maintained as provided in Guideline G-070, Disposal of Records.

B. Transaction Reports

1. All campus personnel transactions shall be incorporated as part of the institutions' and technology centers' proposed operating budgets and October 31 budget

revisions. TBR staff shall determine the appropriate form and medium for the information.

2. Current personnel information may be reported periodically to the staff by institutions and technology centers for administrative purposes relative to the maintenance and operation of management information systems.
3. Current personnel reports may be requested from the institutions and technology centers at any time in response to requests for information for TBR staff, Board, Legislature, etc.
4. Affirmative action compliance audit reports may be requested on an annual basis.
5. Source: July 2, 1976 and August 19, 1976 TBR staff memoranda; Revised September 16, 1980 TBR staff memorandum; July 1, 1984; August 16, 1984 TTC Sub Council meeting; July 1, 1985; February 16, 1988 Presidents Meeting; May 15, 1990 Presidents Meeting, September 21, 1990 Presidents Meeting; November 13, 1990 Presidents Meeting; November 11, 1991 Presidents Meeting; November 12, 1996 Presidents Meeting; August 5, 1997 Presidents Meeting; February 16, 2000 Presidents Meeting; May 21, 2001 Presidents Meeting; February 13, 2002 Presidents Meeting; November 5, 2003 Presidents Meeting ; November 8, 2006 Presidents Meeting; February 13, 2007 Presidents Meeting; August 19, 2008 Presidents Meeting; May 12, 2009 Presidents Meeting; May 18, 2010 Presidents Meeting.

Guideline No. G-030

Subject: General Instructions on Form and Execution of Contracts

I. Approval Required.

In general, the Chancellor for the Central Office and for System-wide agreements, the President of an institution, or the Vice Chancellor for the Tennessee Technology Centers or designee is the final approving authority within the system for any contract which is prepared consistent with this guideline; except that the approval of the Chancellor, or designee, shall be required for i.) contracts, including grant agreements, which do not conform to this guideline, ii.) dual services agreements in which the Tennessee Board of Regents (“TBR”) Central Office is the vending or procuring party, iii.) certain real property agreements (as provided in other policies and guidelines), iv.) any agreement required to be approved by the Chancellor under TBR Policy 1:03:02:10 Section 6, v.) the primary operating agreement between an institution and its foundation and any other agreement between the institution and its foundation which does not conform to the requirements of this guideline, vi.) banking and other financial services agreements required by the vendor, and vii) any other agreement, including purchase orders, for more than \$249,999.99 in annual revenue or expense (Renewals of such agreements do not require approval at the Central Office if no substantive changes have been made; in addition, purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the Central office do not require additional submission to the Central Office); however, grants which conform to the requirements of this guideline do not have to be approved at the Central Office.

Agreements must be processed in compliance with applicable legislative fiscal review requirements, as they may be amended from time to time. Articulation agreements should be developed in compliance with instructions or guidance from the Central Office, Office of

Academic Affairs. Generally, it is the responsibility of the institution to negotiate with the other party to bring an agreement into conformity with this guideline and determine that the terms are acceptable to the vendor before the agreement is sent to the Central Office for approval.

Each institution and technology center shall maintain a written contracts manual (may be in electronic format) which sets forth any procedures of the institution or technology center which are in addition to and necessary to comply with this guideline.

A. The purpose of a written contract is to embody the complete agreement in writing. Whether the document is called an agreement, contract, memorandum of agreement (or memorandum of understanding), or purchase order (see TBR Policy 4:02:10:00), it is subject to the requirements of this guideline. No relevant terms should be left to an unwritten "understanding" or verbal agreement; no oral representation of any official agent, or employee of either party, either before or after the execution of an agreement is binding on the parties. The document should be explicit and clearly state the rights and duties of each party and clearly identify all parties.

B. All relevant documents should be incorporated by reference, with the order of interpretation clearly set forth.

C. Amendments and addenda to existing contracts shall clearly state the additions, deletions and modifications to the contract, including a statement as to whether the new terms are in place of or in addition to terms expressed in the original contract. The Institution shall negotiate the terms, draft the amendments and/or addenda, execute them properly, then forward them to the Central Office for approval, if required, along with a copy of the original agreement and any prior amendment or addendum. If a signature from the Central Office is required before the other party and/or the institution have signed an agreement, the institution should include an explanation on the Contract Summary Sheet.

D. All necessary signature approval lines should be prepared by the institution, including that for the TBR.

1. If the other party or contractor is a corporation, its name must be stated in the contract exactly as it appears in its charter. The person signing on behalf of the corporation must have legal authority to do so, and his/her title/position should be shown on the signature page. If the other party is a state agency, signature approval lines are necessary for the Department Commissioner or official of equivalent rank.
2. The President/Director or designee must sign all institution contracts that do not require Central Office approval.
3. The President/Director or designee must sign all institution contracts required to be submitted to the Central Office. If the President/Director or designee's signature has been omitted from contracts prepared and delivered to the Central Office, such contracts may be returned to the Institution.
4. When approval by the Chancellor is not required, that signature blank should be marked "not applicable" or should be deleted.

E. Other Approvals Which May be Required

All inter-agency agreements with other Tennessee state agencies (except agreements with other TBR schools or UT), including dual service agreements for over \$1,500.00, must be approved by the Commissioner of the Department of Finance and Administration. Only Dual Service Agreements in which the Central Office is the vending or procuring party or which do not comply with the requirements of this guideline are required to be submitted to the Central Office.

F. Institutions should prepare a sufficient number of originals of all contracts as desired/required by the parties and an original for the Central Office if Central Office approval is required. Each of the originals of the contract shall bear the original signatures of the parties.

G. For contracts which do not require Central Office approval and for which the other party is agreeable to the use of electronic signatures, Institutions may use electronic signatures as

permitted under Guideline B-095 and the Institution rules and procedures which have been adopted pursuant to B 095.

H. All contracts required to be submitted to the Central Office should be submitted prior to the beginning of the contract's original term or renewal.

All contracts from the technology centers which require Central Office approval shall be first submitted to the Office of the Vice Chancellor for Tennessee Technology Centers.

I. A contract cannot be extended or amended after the original term has expired.

J. A completed Contract Summary Sheet as well as all relevant attachments must accompany all agreements submitted to the Central Office for review. Contract Summary Sheets must be signed by an institution official verifying purchasing compliance, and a justification of non-competitive purchase form must be completed, if applicable.

K. Agreements containing blank spaces or omitting required contract provisions will be returned to the institution for correction and must be resubmitted to the Central Office for approval.

L. Food and Vending Services Contracts. Section III of this guideline and bidding requirements should be followed, as applicable, for food and vending services contracts. Note that State law prohibits an institution from establishing a vending contract for new or existing vending facilities, nor may the institution perform these services itself, without first notifying the Division of Blind Services for the State of Tennessee.

M. Telephone Systems. Section III of this guideline should be adapted and followed as applicable for telephone systems and services contracts.

N. Real property and lease agreements are covered by separate procedures found in Guidelines B-025 and B-026.

II. Required Contract Provisions.

Whenever possible, one of the form contracts in the following sections of this guideline should be followed in order to assure that an agreement conforms to the requirements of TBR policy and this guideline.

A. Purpose/Duties/Scope

Every contract must contain language regarding its purpose and the duties of the parties. For any contract that results from an RFQ or ITB, Institutions are not permitted to change the scope of the service(s) once a contract is awarded. (Department of General Services Purchasing Division, Agency Purchasing Procedures Manual, Revision Twelve, Approved by TBR of Standards, January 30, 2007).

B. Term of Agreement

“Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state’s procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months, except that for revenue contracts, no term shall exceed one hundred and twenty (120) months.”

Finance and Administration Regulations, Chapter 0620-3-3 and General Services Regulations, Chapter, 0690-3-1-03. Every agreement must provide a beginning and ending date or clear language as to how these dates will be determined. No contract may provide for automatic renewal unless the agreement is cancelable for convenience upon a specified period of days notice by the institution; in which case, the contract may renew automatically for up to five years total term if the agreement also contains annual legislative appropriation language or requires no expenditure of state funds. Institutions are encouraged to seek terms of longer than one year but not more than five years for clinical affiliation agreements (See Section 2 of this guideline). If a contract calls for payments or expenditures by the institution from funds appropriated for more than a single fiscal year, the following language (or equivalent language) must be added:

“Continuation of this Agreement is subject to annual allotment of state and/or federal funds.”

C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, and after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also III. D. of this Section for additional exceptions).

If the contractor is a non-resident alien, payment for any portion of the contract from any source will not be made by the institution until an Internal Revenue Service Individual Taxpayer Identification Number has been assigned to the contractor by the Internal Revenue Service and presented to the institution. Final payment shall not be made until the contractor has completed performance. Adequate documentation to support all payments must be maintained by the institution.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 2-3-8 and Purchasing Policy No. 4:02:10:00.

D. Conflict of Interest

If the Contractor is an individual:

"The Contractor warrants that he/she is not and during the term of the contract will not become an employee of the State of Tennessee."

If the Contractor is an organization:

"The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this contract." (Note that this provision must be omitted if the personal, professional and consultant service contract form in Section III of this guideline is used between TBR institutions or between a TBR institution and another state entity.)E. Civil Rights Clause

“The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title VI of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.”

(The second paragraph may be omitted if the other party does not receive federal or state funds in excess of \$50,000.00 annually.)

F. Audit and Documentation Clause

"The Contractor shall maintain documentation for all charges against the state under this contract. The books, records and documentation of the Contractor insofar as they relate to work performed or money received under this contract, shall be maintained in conformity with generally accepted accounting principles for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Institution or the State Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant."

(See Section III of this guideline for audit language for grants.)

No audit clause is required for a one time, fixed payment agreement.

G. Payment for Travel, Meals, Lodging

If a contractor is to be paid/reimbursed for travel, meals or lodging, such payment shall be in the amount of actual cost/per diem, and shall be expressly subject to the limits and rules set forth in TBR's General Travel Policies and Procedures, Policy No. 4:03:03:00.

H. Governing Law

Language shall be included which provides that the agreement is subject to the governing law of Tennessee, unless the other party will not accept this provision. In that case, the contract may be silent as to governing law.

I. Maximum payment clause

If the institution is required to make payments, the agreement must state the maximum dollar amount that may be paid under the agreement.

J. Illegal Immigrants

“Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.”

The required attestation form is attached to this guideline as Appendix I.

This Section is applicable to all sample agreements in this guideline with the exception of clinical affiliation agreements, dual service agreements, use of facilities agreements, and non-credit instruction agreements.

III. Unacceptable Provisions.

The Director of Purchasing and Contracts in the Central Office and the Office of General Counsel are available for assistance in negotiating modifications with the vendor when the institution has been unable to secure agreement of the vendor. The institution may consult with the Director of Purchasing and Contracts in the Central Office or the Office of General Counsel prior to contacting the vendor regarding modification.

The following provisions should not be included in any contracts:

A. Provisions requiring the institution to pay taxes (TCA §§ 67-5-203 and 67-6- 322), late penalties, cancellation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages (Institution is liable for actual damages only TCA § 9-8-101 et seq.).

B. Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR Policy 4:03:03:00.

C. Provisions designating the governing law of a state other than Tennessee.

D. Provisions requiring the institution to make deposits or payments before goods are received or services are performed (TCA § 12-4-703), except that the institution may pay for computer software or computer software/hardware maintenance and other similar maintenance services upon the signing of an agreement. (Such maintenance services are considered fully delivered upon execution of a contract because they are available regardless of whether or not the service is ever used.) Institutions may also make payment for subscriptions upon execution of an agreement. See also Section II. C. above.

E. Provisions requiring the institution to purchase or obtain liability, property or other insurance or a performance bond. If the institution is unable to negotiate for the deletion of such provisions, the Office of the General Counsel should be consulted as it may be possible to purchase insurance or a performance bond in appropriate circumstances.

F. Provisions requiring the institution to insure, guarantee, or indemnify or hold harmless any party from claims which may arise out of the agreement or be brought by third parties. (Tenn. Const. Art. I, §17; Tenn. Const. Art. II, §31; and Tennessee Rules of Finance and Administration Chapter 0620-3-3-.07 (13)).

G. Provisions requiring the institution to obtain or pay for outside labor of persons not employed by the institution (for example, union stage-hands, teamsters, etc.) are prohibited unless such cost is included as part of the total contract price.

H. Provisions requiring the institution to consent to binding arbitration by a third party of claims arising out of or relating to the agreement. (TCA §§ 86-301 and 20-13-103.)

I. Disclaimer of vendor's liability for incidental, exemplary, or consequential damages. Certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

J. Disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose. Certain warranty disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., and the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

K. Limitation on dollar amount of damages recoverable by state from vendor, except that certain liability disclaimers are permissible subject to the provisions of TBR Purchasing Policy Sections XV H. and I., the provisions of Section 11 subsection Contract of Adhesion of this guideline, or approval of the Office of General Counsel.

L. Unless vendor or institution provides shipment protection in the institution's interest, passing of risk of loss or title to institution before delivery and/or installation of products.

M. Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.

N. Award of attorneys' fees or costs to vendor in the event of legal action against institution. (TCA § 9-8-307(d)).

O. Consent to jurisdiction in courts outside Tennessee.

P. Provisions requiring the institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (TCA § 12-4-701 et seq.).

Q. Provisions permitting the vendor to take a secured interest in personal property under the agreement.

R. Limitation on time in which state may bring suit. (TCA § 28-3-109).

S. Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act. (TCA § 10-7-101 et seq.).

IV. Reporting Requirements

Institutions shall report quarterly to the Office of Purchasing and Contracts at the Central Office the following information (in the format provided by the Central Office):

A. Small/Minority/Woman-Owned Business Report - in accordance with TCA § 12-3-8.

B. RFP Diversity Report – report of contracts issued from requests for proposal for goods and/or services pursuant to TCA § 12 -3-807(b).

C. Quarterly Contracts Report for Personal, Professional, and Consulting Contracts – in accordance with Fiscal Review Requirements, institutions shall submit the following two (2) reports*:

1. Contracts Ranging from \$2,000.00 to \$50,000.00
2. Contracts Ranging from \$50,000.00 to \$249,999.99

D. Senate Finance, Ways, and Means Report – Institutions shall submit an annual report of all existing service contracts.

*Dollar amounts reported for each contract shall be based on total term of contract, including all renewals.

V. The Chancellor or designee may approve exceptions to the requirements of this guideline in appropriate cases.

Section 2

CLINICAL AFFILIATION CONTRACTS

I. SCOPE

Clinical affiliation agreement - an agreement whereby an institution in the Tennessee Board of Regents System ("Institution") desires to enter into a mutually beneficial agreement with another party ("Affiliate") providing for the training/experience of students enrolled at the Institution at the other party's facility ("Facility").

II. GENERAL RULES

A. Generally, these agreements do not provide for monetary compensation to either the Institution, the other party or to any student; however, the form can be modified if any payment is to be made.

B. Health Records and Insurance. The Institution may provide health records of students (and faculty, if necessary) upon request by the Affiliate. Note: The Institution must give

students/faculty prior written notice that they will be required by the Affiliate to obtain and provide health records in order to participate in clinical experience. The Affiliate may also require written evidence of professional liability insurance coverage from individual students (and faculty) participating in the experience. The Institution may give notice of the minimum amount of coverage that is required by the Affiliate of the students/faculty and that this coverage is required during the term of the student's/faculty's assignment at the clinical Facility.

C. Background Checks (faculty/staff and/or students). If criminal background checks of students are required by the Affiliate, the Institution shall notify students of this requirement prior to enrollment in the program or as soon as the requirement is known. Students will be informed by the Institution that the check must be completed within the 90 day period immediately prior to the student's initial clinical placement. It shall be the student's responsibility to make timely arrangements for the background check and to pay all costs associated with such checks.

If criminal background checks are required for Institutional faculty or staff, it shall be the Institution's responsibility to arrange for the background check, to pay all costs associated with such checks and to provide the results to the Affiliate.

It shall be the responsibility of Affiliate to set the eligibility standards for participation and to evaluate the results of the background checks. If Affiliate determines that a student or faculty /staff member shall not participate at its facility, Affiliate shall so notify that individual and the Institution. Institution shall take steps to ensure that this individual does not participate in the clinical program at the Affiliate.

If an Institutional faculty/staff member is also an employee of Affiliate or is an employee at another hospital, health care facility or health care organization, Affiliate will allow the faculty/staff member to provide on-site supervision and instruction for its clinical program without the necessity of undergoing an additional background check.

Recognizing that students enrolled in the _____ program at Institution will potentially participate in multiple clinical placements at multiple facilities, Affiliate agrees to accept the

results of the background check done prior to the student's initial clinical placement if the student maintains continuous enrollment in the health care program and if the results of the background check are archived by the background check agency.

Institution shall inform students or faculty/staff members excluded from clinical placement on the basis of a criminal background check of any review or appeal process available pursuant to the Fair Credit Reporting Act or any other law or policy, if any.

Institutions may agree to language in clinical agreements regarding background checks in accordance with the guidance set out in this Section II. C.

D. HIPAA Compliance. Institutions are not business associates of the clinical Affiliates to which students are assigned for clinical experience; nor, under HIPAA, is a member of the Affiliate's workforce a business associate. For purposes of HIPAA, students are trainees and are, by definition, considered to be the "workforce" of the Affiliate. Therefore, entering into business associate agreements is not appropriate (at the same time, it should be noted that students are employees of neither the Institution nor the Affiliate).

Note – although HIPAA language is included in the form contract as the second and third paragraph of II. E.1., this HIPAA language may be omitted upon the request of the Affiliate. However, no HIPAA language which differs in substance may be included in the agreement without prior review by the Office of the General Counsel.

E. Agreements which comply with this guideline and which do not deviate in substance from the attached standard agreement may be executed by the Institution and should not be submitted to the Central Office for approval. In addition, agreements previously approved by the Central Office may be renewed without Central Office approval if no substantive changes are made.

III. UNACCEPTABLE PROVISION(S)

Any provision requiring students or faculty of the Institution to sign releases, waivers or hold harmless agreements relieving the Affiliate from legal liability for personal injury or property damage resulting from the negligence of the Affiliate or its employees.

Source and authority: TBR Policy 1:03:02:10

Sample Clinical Affiliation Agreement

Section 3

PERSONAL SERVICE, PROFESSIONAL SERVICE, AND CONSULTANT SERVICE CONTRACTS

I. SCOPE

A contract for personal service, professional service, or consulting service shall be used when the vendor's discretion or the form of the end product or service is critical to the performance. The following procedures shall not apply to:

- A. Contracts for services required to be approved by the State Building Commission;
- B. Contracts for legal services which are subject to T.C.A. Sections 8-6-106 and 8-6-301; all such contracts must originate in the Office of General Counsel prior to any action being taken to retain any legal or legally related services;
- C. Contracts for utility services (see TBR Policy 4:02:10:00);

II. PROCEDURES FOR ENTERING INTO PERSONAL, PROFESSIONAL AND CONSULTANT SERVICE CONTRACTS

- A. All purchases of personal, professional, and consultant services should be based, to the maximum extent practicable, on evaluation and consideration of vendor qualifications and cost,

following the procedures and reporting requirements provided in TBR Purchasing Policy 4:02:10:00. Proposals for such services shall be analyzed on the basis of factors pertinent to the service in question. Contracts shall be awarded to the vendor who offers the best terms, and neither the price nor technical factors shall be the sole criterion, although price may be the criterion for determining which proposals to consider. (If more than five proposals are received, those quoting prices higher than the fifth lowest may be disregarded.)

Some factors which may be considered in evaluating proposals:

1. Prior experience;
2. Organization size and structure of vendor in relation to services to be performed;
3. Qualifications of staff to be assigned to perform the services;
4. Vendor's understanding of service to be performed;
5. Price by unit (or other measurement) of service. Cost must be weighed at least 25%.

III. RULES GOVERNING PERSONAL, PROFESSIONAL AND CONSULTANT CONTRACTS

A. Outside Contractors

A contract for services with a person or professional organization outside state government shall not be approved unless it is determined that the services are in fact needed, and they cannot be satisfactorily and economically performed by an agency of the state government. State policy prohibits personal, professional, or consulting contracts from creating an employer/employee relationship.

B. Contracts with Former and Present State Employees

Contracts with former state employees within six months of termination are prohibited. Institutions will not be allowed to contract with an individual who is, or within the past six months has been, a state employee. An individual shall be deemed a state employee until such

time as all compensation and terminal leave has been paid. Contracts with a company or corporation in which a controlling interest is held by any state employee or the employee's spouse shall be considered, for the purpose of applying this rule, to be a contract with the individual. See also TBR Policy 1:02:03:10

C. Payments

All agreements must provide that payments are to be made only upon submittal of invoices by the contractor, after performance of the portion of the services which the invoiced amount represents, except that agreements with tax-exempt non-profit organizations may provide for periodic advance payments (see also Section I of this guideline). All agreements must require that periodic (monthly or quarterly) progress reports be submitted to the institution, which reports must be evaluated and the work found to be sufficient according to the terms of the contract prior to approval of the next payment; provided that in the case of agreements with individuals where the services to be provided are brief in nature, and adequate performance of the services may be satisfactorily determined in the absence of progress reports, payments may be made after performance of the agreed upon services upon submission of invoices or other appropriate requests for payment indicating the services performed, the date of performance, and the amount payable pursuant to the agreement.

Sales/Ownership/Ethnicity Information. As part of the purchasing and contracting process, institutions shall attempt to collect: type of business, annual sales, business ownership and ethnicity information before payment is made to the vendor. Information shall be collected in accordance with TCA § 12-3-8 and TBR Purchasing Policy No. 4:02:10:00.

D. In appropriate cases, the institution shall require the contractor to demonstrate proof of appropriate forms of insurance, and/or to provide a performance bond.

E. Institutions are responsible for monitoring the Title VI compliance of sub-recipients of federal funds.

F. Appropriate language regarding intellectual property rights should be included in contracts developed under this Section III. (TBR Policy 5:01:06:00.)

G. Any part of this guideline may be waived by the Chancellor or designee in the event of conflict with applicable federal regulations or provisions governing the use of federal grant funds.

H. Each institution shall maintain all necessary records to reflect compliance with this guideline and TBR Purchasing Policy, including records of all bids, proposals, or other offers for services submitted for each service contract.

I. Gramm Leach Bliley Act (GLBA) Language.

All contracts with service providers that, pursuant to the terms and/or nature of the agreement, will have access to the institution's customers' non-public financial information (e.g., personal information that is maintained by the institution to provide a financial product or service, such as a student loan) must include the following clause:

“Throughout the term of this Agreement, Service Provider shall implement and maintain ‘appropriate safeguards,’ as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all ‘customer information,’ as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Service Provider by Institution pursuant to this Agreement. The Service Provider shall implement an Information Security Program (‘the Program’) as required by the FTC Safeguard Rule. Service Provider shall promptly notify the Institution, in writing, of each instance of (i) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

Service Provider shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees,

which arise as a result of Service Provider's failure to meet any of its obligations under this provision. Service Provider shall further agree to reimburse the Institution for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Service Provider or its subcontractors or agents.

Service Provider grants Institution the right to conduct on-site audits, as deemed necessary by the Institution, of the Service Provider's Program to ensure the integrity of the Service Provider's safeguarding of the Institution's customers' nonpublic financial information.

Institution retains the right to unilaterally terminate the Agreement, without prior notice, if Service Provider has allowed a material breach of its Program in violation of its obligations under the GLBA, if Service Provider has lost or materially altered nonpublic financial customer information, or if the Institution reasonably determines that Service Provider's Program is inadequate.

Within thirty (30) days of the termination or expiration of this Agreement, Service Provider shall, at the election of Institution, either: (1) return to the Institution or (2) destroy (and shall cause each of its agents to destroy) all records, electronic or otherwise, in its or its agent's possession that contain such nonpublic financial customer information and shall deliver to the Institution a written certification of the destruction."

J. Red Flags Language

Federal law (Section 114 of the Fair and Accurate Credit Transaction Act of 2003 amending the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681m(e)) and the Federal Trade Commission rules concerning the prevention of identity theft (16CFR Part 681), commonly referred to as the Red Flags Rule ("the Rule"), require that institutions monitor the activities of their service providers if the service provider performs activities in connection with one or more covered accounts covered by the Rule. These activities can include such activities as opening or managing accounts, billing, providing customer service or collecting debts. In these situations, the service

provider must apply the same standards as the institution would if the institution were performing those tasks.

Pursuant to TBR Policy 4:01:05:60, institutions must require, by contract, that the service provider either: 1) have policies and procedures in place to comply with the Rule; or, 2) review the institutional policy and report any red flags to the Program Administrator.

Add the following language to contracts as described in the immediately preceding paragraph:

Red Flags and Identity Theft. The Service Provider shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Service Provider's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.

If Service Provider maintains its own identity theft prevention program consistent with the guidance of the Red Flag Rules and validated by due diligence, the Service Provider shall have met the requirements of the first paragraph of this Section.

K. The first form contract in this Section III may be adapted for many purposes. For example, when a service contract is with another Tennessee state agency, the following items are not essential and may be omitted: the second paragraph of B. 3 and C. 1, 2, 3, 4, and 13. The second form contract in this Section III may be used any time the additional terms are appropriate. This form is included in the approved RFP format as the pro forma. Additionally, it is required to be used, if the other party is not insisting on using its own contract form, in the following instances: (1) for personal service contracts that result from an RFP process; (2) for personal service contracts which require Central Office approval; (3) for personal service contracts which require Fiscal Review approval; and (4) for all other service contracts, in which the institution's procurement and/or contracts office determines this form is appropriate.

GRANT AGREEMENTS

A. The President or designee of an institution is authorized to approve applications for grants from agencies or organizations; provided that, when matching funds or services in lieu of funds

are required by the institution, no application shall be made unless the operating budget provides the funds and/or resources necessary for the project. The President is further authorized to accept the award of a grant and enter into agreements confirming grants, provided that the acceptance of grants and agreements confirming the award of grants shall be subject to the requirements of this guideline. Grants which conform to the requirements of this guideline do not require the approval of the Chancellor regardless of the amount of the grant.

B. The following procedures shall govern expenditures for personal, professional or consulting services pursuant to grant contracts:

Procedures

1. The institution shall conduct negotiations when possible to ensure that payments are appropriate to support the activity contemplated.
2. A written budget and work program shall be prepared and included in the grant agreement.

C. Contracts Representing Grants. Grant contracts not involving federal money must include the following provision:

"The contractor shall cause to be performed, in accordance with auditing standards prescribed by the Comptroller of the Treasury of the State of Tennessee, an audit of all its program(s) funded by this contract; provided, however, that any contract for such audit shall be subject to prior approval of the Comptroller of the Treasury of the State of Tennessee, and must be submitted on the standard contract to audit accounts' form published by the Comptroller of the Treasury. The audit may include and be combined with an audit of other programs of the contractor, and the existence of more than one contract between the contractor and any agency of the State of Tennessee shall not necessitate more than one (1) audit of the contractor's programs to be performed every two years."

Grant contracts involving Federal money must include the following provision:

“The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this grant to the commissioner or head of the granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives \$300,000.00 or more in aggregate federal and/or state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the State Granting Department, the Tennessee Comptroller of the Treasury, the Department of Finance and Administration, and shall be made available to the public.”

D. Grant Contracts. Procurement by grantee--grant contracts which provide for reimbursement for the cost of procuring goods, materials, supplies, equipment or services shall contain the following provision:

“If the terms of this contract allow reimbursement for the cost of procuring goods, materials, supplies, equipment or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures), when practicable.”

E. Federally Funded Grant Contracts. Procurement by contractor--when a grant contract provides that the contractor may make purchases and be reimbursed for its cost with funds derived wholly or partially from federal sources, the following clause or one of substantially the same effect should be included:

"Reimbursement for the cost of procuring goods, materials or services shall be subject to the contractor's compliance with applicable federal procurement requirements."

F. Federally Funded Contracts. Compliance with federal regulations--if federal funds are used to support the contract, the following clause must be included:

"The contractor shall comply with all applicable federal regulations in the performance of duties under this contract."

Source: Finance and Administration Regulations, Chapter 0620-3-3

Sample Personal Service, Professional Service, and Consultant Service Contracts

Pro Forma Contract

Section 4

DUAL SERVICES AGREEMENTS

I. SCOPE

This guideline is applicable to agreements whereby an institution in the Tennessee Board of Regents System or any agency of state government desires to procure the services of an employee of another institution or state agency or to provide the services of one of its employees to other institutions or state agencies. See TBR Policy 5:01:05:00.

II. GENERAL RULES

A. Job priorities. It is the policy of the Tennessee Board of Regents that a full-time employee of an institution must devote his or her full working time to his or her position; therefore, any

agreement which diminishes an employee's availability for the performance of his or her duties will not be approved, except as provided in this guideline. In general, the services to be performed are of an infrequent or short term nature.

B. Overtime. If the work to be performed constitutes overtime or extra services for the employee involved and if the vendor institution receives payment from the procuring agency or institution and desires that the employee be compensated for such work, then compensation must be made pursuant to one of the following methods: (i) for faculty workload reduction or extra compensation; or (ii) for other employees, compensatory time, overtime payment, workload reduction, or temporary salary adjustment.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

A. A brief description of the services provided or secured from the state agency concerned.

B. Include the name and social security number of the employee providing the services.

C. In describing the terms of the agreement, include a statement of the rate and means of compensation to be paid by the procuring agency or institution to the employer agency or institution (the vending party), including when payment will be made and to what address invoices are to be sent.

D. Conditions governing employee services and methods of compensation.

A letter or other notice from the procuring party that the services have been provided and the submission of an invoice from the vendor party are required prior to payment for services rendered when:

1. An employee of another institution is to be compensated for services other than as a temporary part-time employee; or

2. Compensation is to be paid to another institution or state agency for services to be performed pursuant to an agreement.

E. Number 7 of the form agreement may be omitted in dual services agreements: between TBR institutions, between TBR and UT, and between TBR and any other state entity; however, some state entities may require this provision.

IV. RULES, GOVERNING DUAL SERVICES AGREEMENTS WITH OTHER STATE AGENCIES (OTHER THAN THE UNIVERSITY OF TENNESSEE AND TENNESSEE BOARD OF REGENTS INSTITUTIONS)

A. No payment shall be made by a Tennessee Board of Regents institution directly to an employee of another state agency for services of any nature. Any payment or transfer of funds for such services shall be between the institution and the state agency.

B. Approvals - all dual services agreements of this kind require the signature of:

1. An authorized official of the institution or agency procuring the services.
2. In addition, if compensation exceeds \$1,500.00 to any state agency employee, other than UT or between TBR institutions, approval is required by the Department of Finance and Administration.

Regardless of amount involved, a copy of each agreement must be filed with the Department of Personnel and the Department of Finance and Administration.

C. No dual services agreement which conforms to the requirements of this guideline shall require the approval of the Central Office, except dual services agreements in which the Central Office is either the vendor or procuring party.

V. RULES GOVERNING DUAL SERVICES AGREEMENTS WITH THE UNIVERSITY OF TENNESSEE INSTITUTIONS

A. When the agreement concerns an institution in the Tennessee Board of Regents System and a University of Tennessee institution, the agreement may take one of two forms. The contract may be either:

1. Between the employee involved and the other institution pursuant to the provisions in B. below; or

2. Between the two institutions involved, pursuant to the provisions in G. below.

B. Contracts between an employee of one system and a procuring institution in the other system are permitted only in the following situations:

1. When the services to be performed are of an infrequent or short term nature.
2. Payment will not exceed the maximum rate provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).
3. When the services to be performed involve teaching or instruction by an employee, the maximum services permitted shall be as provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).

Contracts under this Section B. may be between the employee and the institution or between institutions. If payment is made directly to the employee, the employee shall be treated as a temporary part-time employee of the procuring institution.

Dual services agreements under this Section V B., between an employee and the procuring institution, are the only dual services agreements in which an employee may be a party, and the employee's signature is only required on dual services agreements in which an employee is a party.

C. When an agreement is made directly between the employee and the institution as discussed in V B., the employee must obtain the written approval of his or her supervisor and dean or director; and the procuring institution must provide written notice of the agreement to the employer institution. A copy of the agreement must be forwarded to the vendor party's Human Resource Office.

D. Any payment made to an exempt employee of a TBR institution by a University of Tennessee institution should be treated as, and counted toward the maximum of, extra compensation for such employee as described in TBR Policy No. 5:01:05:00.

E. Any compensation paid shall not exceed the rate the procuring institution or agency normally pays for such services.

F. Conflicts of interest must be avoided.

G. In all dual services agreements covered by Section V other than those set forth in paragraph V B.:

1. A memorandum of agreement must be signed between the two institutions involved.
2. Any payment or transfer of funds for such services must be between the two institutions, and must not involve the individual employee.
3. No employee of an institution may be a party to such agreement.

VI. RULES GOVERNING DUAL SERVICES AGREEMENTS BETWEEN TENNESSEE BOARD OF REGENTS INSTITUTIONS

A. When one TBR institution procures the services of an employee of another TBR institution, the agreement shall take the following form:

1. The agreement shall be between the institutions involved, pursuant to the provisions in B. below.
2. Blanket dual services agreements are allowed. For example, if an institution is employing twenty (20) individuals from another TBR institution, one blanket agreement which includes the names and rates of compensation may be used.
3. Payment shall only be made after performance. The procuring institution shall be required to send a copy of the agreement and notice to the vending institution that the services have

been completed, and the vendor institution will then invoice the procuring institution for payment.

B. Contracts between the TBR institutions are permitted in the following situations:

1. When the services are of an infrequent or short term nature; and

When the services to be performed involve teaching or instruction by an employee not in excess of the maximum permitted under TBR Policy No. 5:01:05:00.

C. Any payment made by the procuring institution to another institution shall be treated as, and counted toward the maximum of, extra compensation for an exempt employee as described in TBR Policy No. 5:01:05:00.

D. Any compensation paid shall not exceed the rate the procuring institution normally pays for such services.

E. Conflicts of interest must be avoided.

Source and Authority: TBR Policy No. 5:01:05:00; Section 36 of Chapter 732 of the Public Acts of 1976, and the rules of the Department of Finance and Administration.

Sample Dual Services Agreement

Section 5

USE OF CAMPUS FACILITIES

(General use by non-affiliated organizations)

I. SCOPE

Use this guideline for agreements for short-term rental or use of campus facilities for activities by non-affiliated organizations. Such agreements include, but are not limited to, those for musical performances, speakers, conventions, exhibits, etc. This guideline does not apply to lease of property for residential use and/or commercial lease of property (See TBR Guideline B-026). See also Section 6 of this guideline.

II. GENERAL RULES

A. All use of campus facilities and agreements providing for such use must comply fully with TBR Policy No. 3:02:02:00.

B. All agreements providing for campus-based performances and any other agreements subject to Sections 5 and 6 of this guideline with a value exceeding \$249,999.99 must be submitted to the Central Office for approval.

C. Agreements which deviate from this guideline must be submitted to the Central Office for approval.

D. All use of campus facilities must be related to the mission of the institution.

E. The agreement should include as parties, each non-affiliated individual or organization who has direct responsibility for fulfilling terms of the agreement or who is to share in the revenue.

F. The agreement may not require the institution to make future commitments beyond the end of the agreement for exclusive dealing.

Source and authority: TBR Policy No: 3:02:02:00

Sample Use of Campus Facilities Agreement

Section 6

ADDITIONAL FORMS FOR USE OF SPACE

(Special alternative agreement forms)

I. SCOPE

Below are additional/alternative approved, forms for short-term lease or use of TBR space, and the applicable terms and conditions for each, as well as the instructions for filling them out.

A. MUTUAL USE AGREEMENT

Involving a Tennessee Board of Regents Institution

B. TRANSIENT USE AGREEMENT

Involving a Tennessee Board of Regents Institution

C. TENANT USE AGREEMENT

Between Two Tennessee Board of Regents Institutions

D. MUTUAL OR TRANSIENT USE Terms and Conditions For an Agreement Involving a Tennessee Board of Regents Institution

E. TENANT USE Terms and Conditions For an Agreement between Two Tennessee Board of Regents Institutions

F. INSTRUCTIONS for filling out Use Agreements

II. TYPES OF AGREEMENTS NOT COVERED:

A. Leases subject to State Building Commission oversight, identified at TBR web site in the Facilities section.

B. Event-Oriented Use Agreements For short-term use of facilities for a specific event, such as a concert, festival, special competition, or single-day educational events, the requirements continue to be those set forth in TBR Policy 3:02:02:00 and in Section 5 (above) of this guideline.

III. TYPES OF AGREEMENTS COVERED:

A. Tenant Use Agreements Which are arrangements similar to a lease, but occurring between two TBR institutions.

B. Transient Use Agreements

1. Provide short-term, continuing, non-exclusive use of facilities, such as evening use of high school space as a teaching extension site for a semester.

1. Distinct from the event-oriented Use Agreement under TBR Policy

2. 3:02:02:00 and Section 5 of this guideline.

2. Can be for TBR use of non-TBR facilities, or non-TBR use of TBR facilities.

C. Mutual Use Agreements

1. Similar to Transient Use, except that both parties make use of each other's spaces.

2. Between two TBR institutions or one TBR institution and a non-TBR entity.

3. Instead of financial compensation, the consideration is the mutual use of each other's facilities.

IV. APPROVALS

Tenant, Transient, and Mutual Use Agreements are simplified versions of the standard lease, designed for the less-formal arrangements described above. They are not subject to most SBC and TBR lease approval processes when properly used in their intended circumstances, but may still be subject to review and/or approval in the TBR Central Office (as provided in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030), and are subject to the signature requirements set forth in TBR Policy 1:03:02:10, TBR Policy 3:01:02:10, TBR Guideline B-026 and TBR Guideline G-030 for other use agreements.

V. APPLICABLE TERMS AND CONDITIONS

Standard Terms and Conditions are provided containing the “boilerplate” fixed provisions, so that the agreement forms focus on the permissible variables, and editing is less likely to result in the insertion of unacceptable clauses or removal of necessary ones.

Section 7

CONTRACTS FOR ACQUISITION OF HARDWARE, SOFTWARE AND RELATED SERVICES

I. SCOPE

This guideline applies to purchases, rentals, leases, licenses, trades or gifts of computer hardware (equipment) and software or related services for data processing or audio visual purposes and music performance license agreements. Acquisition of computer systems involving the purchase of hardware with the development of application software shall be made in accordance with this guideline.

II. GENERAL RULES

A. Each acquisition by an institution should be documented in writing in the form of a purchase order issued by the institution and/or a contractual agreement to formalize acceptance of a vendor’s bid and delivery of products or services.

B. All institutional acquisitions of hardware, software, and related services must comply with this guideline. It is the responsibility of the institution to negotiate changes in all vendor provided agreements so that such agreements comply with this guideline.

If vendor does not provide an agreement, the attached standard agreement may be used for software licenses and, with appropriate adaptation, for equipment purchases. If maintenance contractors do not provide an agreement, the standard agreement for personal service contracts should be adapted for use as a maintenance contract.

The Office of General Counsel is available for assistance in negotiating modifications with the vendor. The institution may wish to consult General Counsel prior to contacting the vendor regarding modification.

C. All agreements subject to this Section 7 which exceed \$249,999.99 or which do not comply with this guideline shall be subject to the express approval of the Chancellor of the Tennessee Board of Regents. Institutions must negotiate deletion of all unacceptable provisions and must attempt to secure the agreement of the vendor prior to submission to the TBR Central Office for approval.

D. The TBR Central Office has negotiated master agreements with several vendors permitting purchases thereunder by all institutions in the TBR system. These agreements contain terms and conditions that have already been approved by the TBR Central Office. Whenever acquiring data processing related products, TBR institutions should first consult the Director of Purchasing and Contracts in the TBR Central Office to see what may be available pursuant to any existing agreements. Whenever acquiring audio visual related software, TBR institutions may wish to first consult the TBR media consortium.

E. Testing of Hardware, Software or Related services

Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require the written approval of the Chief Information Officer in the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:

1. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
2. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

F. Bidding Process

Generally, contracts for the acquisition of hardware and software should be awarded pursuant to the bidding process. Service agreements are also subject to the bidding process.

1. All requests for proposals (bids), invitations to bid and bid specifications must comply with TBR Policy 4:02:10:00 and this guideline and must clearly state all contractual provisions and requirements including the mandatory provisions.
2. The bidding process must comply with TBR Policy 4:02:10:00.
3. All bid specifications must be incorporated by reference in all contracts awarded pursuant to the bidding process. The following language should be included in the contract:

The contract documents consist of this Agreement, the Institution's purchase order no. _____, the Institution's request for bids no. _____ (or Institution's request for proposals no. _____), Contractor's bid dated _____ (or Contractor's proposal dated _____) and any addenda and/or amendments to this Agreement hereafter executed. In the event that provisions of the contract documents conflict, priority of interpretation shall be as follows: addenda and/or amendments (latest addendum or amendment with first priority), the Agreement, the Institution's purchase order, the Institution's request for bid (or Institution's request for proposals), and the Contractor's bid (or the Contractor's proposal).

4. All bid specifications and all other relevant contract documents must be attached to contracts that are submitted to the TBR Central Office for approval.

G. Software Licensing and Warranties

See also the provisions of TBR Purchasing Policy Sections XV H. and I., and Section 11 of this guideline.

1. Generally, the legal right to use software is obtained in the form of a license agreement. The permissible use of the software is governed solely by the terms and conditions stated in the license agreement. A standard form software license agreement is attached and should be used when the vendor does not provide an agreement. Vendor provided license agreements must be amended to conform to this guideline.
2. Limited warranty. Unless internet service / access is a specific service to be paid for and provided under an agreement, no warranty regarding the internet is required, and the vendor may disclaim warranties regarding the internet.
3. If software is provided at a nominal cost or free, and the vendor has not offered any warranty, the Institution should ask for language that the vendor warrants that the vendor has the right to license the software as provided in the agreement.

4. Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require written approval of the TBR Central Office. This category includes agreements which permit the experimental use of such products or services without warranty, at little or no cost to the institution and for the benefit of the vendor. In relation to such agreements:

- a. The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
- b. The institution may not agree to hold the vendor harmless from any liability, notwithstanding the fact that the state may not be paying for the use of the experimental products or services.

H. Related Services

Agreements for related services include those for maintenance and support services.

1. Service agreements may be included as part of an acquisition agreement for hardware or software or may be a totally separate agreement with the same vendor or with a non-related vendor.
2. Service agreements are in the nature of personal services irrespective of the form of the service and must comply fully with Section 3 of this guideline for personal service agreements as well as this Section.

I. Music performance license agreements (See also, sample agreement under Section 5 above.)

1. A music performance license agreement grants a non-exclusive license to perform publicly or permit the public performance of copyrighted musical compositions to which BMI, ASCAP, or SESAC (music licensing organizations) has the right to grant a license. Music performances which are under the sponsorship, control, authority or receive direct or indirect approval of the institution will require a license.
2. In the event that an affiliated or non-affiliated group wishes to perform or sponsor a performance on campus of such music, the following provisions or equivalent language must be included in the contract:
3. The performer hereby gives assurances that he/she has obtained all necessary copyright and royalty licenses from ASCAP, BMI, SESAC, any other performing rights organization or the copyright owner for the performance(s) presented under the terms of this agreement.
4. The performer agrees to indemnify, hold harmless, and defend the institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the performance(s) presented under the terms of this agreement. Such indemnification shall extend to both criminal and civil actions and shall include any loss, damage, penalty, court costs or attorneys' fees incurred by the institution.
5. The institution/state shall promptly notify the performer of any such claim brought against the state. The settlement or compromise of any claim brought against the state shall be

subject to the approval of the appropriate state officials, as required by T.C.A. § 20-13-103.

Sample Software License Agreement

Section 8

INTELLECTUAL PROPERTY AGREEMENTS

I. SCOPE

TBR Policy 5:01:06:00, Intellectual Property, sets out the approved procedures governing TBR intellectual property issues. In addition, resource information and approved form/sample agreements are provided at the TBR web site in the General Counsel section.

II. FORM CONTRACTS

Form/Sample contracts provided in the General Counsel section of the TBR website can be found at the following links:

Invention Disclosure Form

Copyrightable Works Disclosure Form

IP Agreement

Employee Work for Hire Agreement

Copyright License Agreement

Partial Assignment of Copyright Ownership Agreement

Joint Ownership of Copyright Agreement

III. RESEARCH AGREEMENT

An agreement form which may be used for sponsored research contracts and which contains key provisions / issues that should be covered/considered if the other party proposes to use its own contract form is provided below.

Source: TBR Policy 5:01:06:00

Sample Intellectual Property/Research Agreement

Section 9

CONTRACTS FOR DEPOSIT AND INVESTMENT OF FUNDS

I. SCOPE

This guideline shall be used for the deposit and investment of all funds, regardless of source, which are received by a TBR institution or technology center. Where the term "bank" or "banking institution" is used in this guideline, it refers to all financial institutions including savings and loan associations.

II. GENERAL RULES

A. Each TBR institution is authorized by the TBR to enter into one contract for the deposit of funds for the institution's general operating account, one Tennessee insurance account, and one payroll account at a bank or banking institution authorized under Tennessee law to accept state deposits. Each Technology Center is authorized to have one interest checking account. No additional accounts of this nature will be approved for opening or maintained by any Institution or technology center unless specifically approved by the Chancellor or designee.

B. Petty Cash Funds

1. The president of each Institution is authorized to establish one or more checking accounts for the deposit and disbursement of petty cash funds, provided that no such account shall exceed five hundred dollars (\$500.00)
2. The president may designate a custodian of the funds. If the custodian has accepted responsibility for the funds in writing, and has agreed to repay any shortages or expended funds not properly accounted for from the account, then the custodian may be designated in the agreement as the signatory authority for the account, and the custodian or the chief business officer of the Institution shall be authorized to withdraw funds from the account.

C. Complimentary non-interest bearing accounts are prohibited and will not be approved.

D. All agreements between a banking institution and an institution of the TBR are subject to the express written approval of the President or designee or the Vice Chancellor for Tennessee Technology Centers or designee and the Chancellor of the TBR or designee, as appropriate.

E. All documents required by a banking institution shall be obtained, reviewed, and negotiated to ensure that the documentation complies with TBR policy.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The “Banking Agreement” at the end of this section should form the basis of the agreement; however, a few additional elements are described below:

A. Facsimile Signatures - Facsimile signatures may be used on instruments of withdrawal unless the withdrawal exceeds one percent (1%) of the State appropriation to the institution for the year or ten thousand dollars (\$10,000.00), whichever is greater, in which case the withdrawal must bear the original signature of the president or the chief business officer.

B. A provision which states the purpose of the account and that the amount of funds to be deposited and maintained in the active (checking) account will be reasonably related to the number of checks to be processed through the account during any month and other servicing costs, if any.

C. A provision identifying the nature and level of services to be provided by the banking institution and the cost, if any, for these services. Such services should include but are not limited to:

1. the provision of standard services for processing checks and deposits in accounts;
2. the provision of the required collateral security for all deposits;
3. the provision of a branch office of the bank within a specified distance from the campus;

4. the provision of interest on savings accounts at a rate equal to the maximum rate offered by other banking Institutions in the county, with the ability to transfer funds between active and savings accounts upon a specified minimum notice;
5. the provision of investment services;
6. the provision of account reconciliation services;
7. the provision related to Automatic Clearing House debits and credits including direct deposit; and
8. the provision of safe deposit box services.

(Any additional services provided must also conform to TBR and state laws regulating public funds.)

D. A provision which states that funds of the institution will only be invested in a bank or savings and loan savings account or certificate of deposit or in bonds, notes or treasury bills of the United States which are backed by the full faith and credit of the United States or bonds or obligations guaranteed as to principal and interest by the United States or any of its agencies.

E. In addition, agreements with savings and loan associations must state that the savings and loan agrees to comply with the collateral security requirements of TBR Policy 4:01:01:10 and state law and that the savings and loan will provide upon request:

1. an opinion of legal counsel that the association has the authority to collateralize public funds;
2. a resolution adopted by TBR of directors authorizing such investments; and
3. appropriate written instructions for the transfer of funds.

Source and Authority: TCA Chapter 4 of Title 9; TBR Policy 4:01:01:10.

Sample Banking Agreement

Section 10

NON-CREDIT INSTRUCTION AGREEMENT

I. SCOPE

This section is applicable to revenue-generating agreements whereby an institution in the TBR system provides non-credit instruction/training for business and industry.

II. GENERAL RULES

The institution is responsible for the administration of fees, charges, and refunds in accordance with TBR Guideline B-060.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreement at the end of this section contains all required elements; however, a few elements are described below:

A. The program title name, a brief description of the program, Continuing education Units (CEUs) awarded, if applicable, the name of the instructor, if applicable, conducting the course, and the dates, times, and location of the course.

B. The minimum and maximum number of participants and the program fee that will be invoiced to company.

C. Other provisions should be specific to include such elements as deliverables by the institution including textbooks, instructional materials, CEU records/transcripts for participants, and/or certificates awarded, etc.

D. Specific requirements of the company should be included such as safety and security of institutional equipment, additional fee assessments outside of the instructional costs, documents/information necessary for instruction, etc.

Sample Non-Credit Instruction Agreement up to \$50,000

Sample Non-Credit Instruction Agreement above \$50,000

Section 11

Contract for Workshops/Seminars (Up to \$5,000.00)

Workshop/Seminar Participation Agreement

I. SCOPE

This section provides sample contracts which may be used for two purposes. The first sample agreement may be used when the institution contracts with a service provider to provide a workshop or seminar and the payment to the service provider will not exceed \$5,000.00. The second sample agreement may be used when the institution contracts with an individual to make a payment to that individual for attending a specific workshop or seminar (for example, a grant may provide for such payments to be made out of grant funds).

II. GENERAL RULES

These forms are provided for use ONLY as described above and may be used instead of the personal services agreement or *Pro Forma*, for the specified purposes, or the personal services agreement form or *Pro Forma* agreement may be used for these purposes.

III. ESSENTIAL CONTENTS OF THE AGREEMENT

The form agreements at the end of this section contain all required elements.

Sample Contract for Workshop/Seminar up to \$5,000

Sample Workshop/Seminar Participation Agreement

Section 12

NEGOTIATING WITH THE NOTWITHSTANDING CLAUSE /CONTRACTS OF ADHESION

It will be a rare contract that does not require some negotiating unless we draft it ourselves. Upon receiving a contract, mark or circle all impermissible clauses and prepare an amendment to the contract that addresses each impermissible clause. In most cases, you will also need to include our standard language concerning non-discrimination, auditing, etc. found in this guideline. If you are unsure whether a clause is impermissible, please call the Director of Purchasing and Contracts or the Office of General Counsel for guidance.

Keep a record of your contract negotiations with the company, including telephone calls, emails and other correspondence. Before suggesting the notwithstanding clause as an alternative, you may want to ask the Office of General Counsel to contact the company to explain the legal problems.

If the company refuses to amend the contract in accordance with our requirements, the Attorney General's office has approved the use of the notwithstanding clause if the company is the sole source of the product (or all vendor's require the limitation language), the product is indispensable to the institution's need, and the notwithstanding clause is inserted in the contract immediately following the impermissible clause. (The Attorney General's Office has not approved any other use or placement of the notwithstanding clause.) Another consideration is the amount of risk assumed by the institution in the event the product fails to perform. In many instances, replacement of the product is an acceptable remedy. In others, such as the malfunction of software, the failure to perform may make the institution very vulnerable to costly damages. The notwithstanding clause only sets forth the state's position in the event the matter goes to court; it doesn't improve your available remedies.

NOTWITHSTANDING CLAUSE:

Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are (it is) finally determined by a court of competent

jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

The notwithstanding clause is also called a severability clause. Many contracts contain such a clause in the “General” provisions. It means that if the matter goes to court, and the court finds the hold harmless clause, for example, unconstitutional, then the court will delete or sever the hold harmless provision from the contract; and the rest of the contract will remain in effect. Without a severability clause, the court will find the entire contract null and void if it contains unconstitutional provisions.

The second reason for the notwithstanding clause is to put the company on notice that we will challenge the legality/constitutionality of the provision should the occasion arise.

Use of the notwithstanding clause as provided in this Section 11 does not require Central Office approval. Therefore, when negotiating with the notwithstanding clause, your file should show:

1. Documentation of attempts to negotiate out impermissible language;
2. The need for the item or service;
3. The fact that vendor is the sole source (or that all vendors require the limitation language); and
4. The notwithstanding clause inserted in the contract immediately following the impermissible clause and a letter to the company showing a clear understanding of the clause.*

*Sample language for the letter: Please be advised that the state considers the provision concerning (description of impermissible clause) void under Tennessee law, and the state reserves the right to challenge such provision should the occasion arise.

5. NOTE: if the provisions of TBR Purchasing Policy Sections XV H. and I. have been followed to address limitation of liability or warranty language, the notwithstanding clause is not necessary and should NOT be used.

CONTRACT OF ADHESION

One last opportunity to purchase or accept goods or services is if the contract is an adhesion contract. An adhesion contract must meet all the following criteria:

1. A standard form contract or license;
2. Offered to the consumer on a 'take it or leave it' basis;
3. The consumer has no realistic opportunity to negotiate different terms; and
4. The desired product or service cannot be obtained except by agreeing to the form contract.

General Rule

To obtain approval of a contract of adhesion, the institution must document the following steps:

1. Documentation of attempt to negotiate needed changes in the contract and the vendor's refusal to agree to any* changes;
2. The need for the item or service(s);
3. The fact that the vendor is the sole source (or that all vendors require the impermissible language); and
4. A copy of a letter to the company (which the company has agreed to accept) stating that the institution regards the agreement as a contract of adhesion.

In order to facilitate acquisition of contracts of adhesion for necessary electronic subscriptions, computer software, and other goods and services, the initiating department must route these contracts through the institutional procurement and/or contracts office. The following procedures are required for approval:

1. For contracts of adhesion up to \$5,000 not requiring signature -procedures, documentation and reporting required under this Section 11 shall not apply.
2. For such contracts or licenses costing more than \$5,000 but less than \$25,000 - Steps 1 through 4 in the General Rule above must be followed. These contracts or licenses must be approved by the President or designee. The file documentation shall be maintained at the institutional level, and central office approval is not required.
3. For such contracts or licenses costing \$25,000 or more - Steps 1 through 4 in the General Rule above must be followed, and approval by the Chancellor or designee is required.

The purchasing officer, contract officer, or other designated official at each institution must maintain a record of all software and other acquisitions over \$5,000, and those under \$5,000 requiring signature, made pursuant to this guideline G-030, Section 11, Contracts of Adhesion and supply the record upon request to the Chancellor or designee.

*In appropriate instances, the President or designee, or the Chancellor or designee, as applicable, may approve a contract as a contract of adhesion when the vendor has agreed to some change(s), but the contract still contains impermissible language; documentation as required above must be maintained. 2

Guideline G-120

Subject: Method of Administration for Compliance with Office of Civil Rights Guidelines, Title VI, Title IX, and Section 504

PART I INTRODUCTORY INFORMATION

This Method of Administration (MOA) for Compliance with Office of Civil Rights Guidelines, Title VI, Title IX, and Section 504 as applied to the Tennessee Technology Centers and TBR Community Colleges offering vocational technical education was developed in 1985 in accordance with federal laws and regulations.

PART II ORGANIZATION TO MEET CIVIL RIGHTS RESPONSIBILITIES

A. Organization of Compliance Program

1. Administrative Unit Directing Compliance Program

The Division of Access and Diversity, Tennessee Board of Regents, will be responsible for implementing and directing the compliance program. The division personnel will utilize resources of other divisions and agencies as the MOA dictates.

2. Compliance Director

TBR Director of Access and Diversity Tennessee Board of Regents 1415 Murfreesboro Road, Suite 340 Nashville, TN 37217

3. Line of authority of Compliance Director

Chancellor, Tennessee Board of Regents

Vice Chancellor for Access and Diversity Tennessee Board of Regents

The line of authority represented above is a direct line from the Compliance Director to the agency administering the MOA to the governing body for postsecondary vocational technical education in Tennessee.

4. Organizational Plan

a. Review of internal policies and procedures

TBR Senior Staff members review policy matters relating to their respective areas and facilitate further review by the appropriate Sub-Councils of institutional representatives. Following review of the various sub- councils, policy matters are then transmitted to the Presidents' Council or the Tennessee Technology Center Directors' Sub-Council. If approved by the Presidents' Council or TTC Directors' Sub-Council and the Chancellor, policy additions or revisions are transmitted to the Tennessee Board of Regents for approval.

b. Development of a Civil Rights Compliance Program -

The Compliance Director will coordinate activities of appropriate TBR staff and institutional personnel to insure an effective civil rights compliance program is in place for all postsecondary vocational technical education in Tennessee.

c. Development of technical assistance activities -

The Vice Chancellor for Access and Diversity will work with appropriate members of TBR Central Staff to provide technical assistance to all institutions offering postsecondary vocational technical education in Tennessee.

d. Coordination of three components -

The Compliance Director will coordinate the selection of staff to provide the above-mentioned functions.

B. Personnel Assigned to Implement the Compliance Program

Vice Chancellor Access and Diversity Tennessee Board of Regents 1415 Murfreesboro Road, Suite 340
Nashville, Tennessee 37217 (615) 366-3920

Vice Chancellor Tennessee Technology Centers, Tennessee Board of Regents 1415 Murfreesboro Road,
Suite 314 Nashville, Tennessee 37217 (615) 366-4460

Director Access and Diversity Tennessee Board of Regents 1415 Murfreesboro Road, Suite 340
Nashville, Tennessee 37217 (615) 365-1508

Legal Counsel Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350 Nashville, Tennessee
37217 (615) 366-4437

Vice Chancellor Business and Finance Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350
Nashville, Tennessee 37217 (615) 366-4413

Vice Chancellor Academic Affairs Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350
Nashville, Tennessee 37217 (615) 366-4406

Associate Vice Chancellor Facilities Development Tennessee Board of Regents 1415 Murfreesboro Road,
Suite 350 Nashville, Tennessee 37217 (615) 366-4432

PART III REVIEW OF STATE POLICIES AND PROGRAMS

A. Conduct of State Policy Review

1. Internal Operations of State Agency -

The Vice Chancellor for Business and Finance will be responsible for the review of Executive Order #8 and the Policies and Guidelines of the TBR which govern employment for all personnel in the system.

The Compliance Director will be responsible for the review of state operated programs to assure that policies and procedures do not discriminate against target populations as to race, color, national origin, sex, and handicap. The Legal Counsel for the TBR will assist in the review.

Results of the review will be reported in the annual report according to the guidelines outlined in Part V of the MOA.

2. Formulas for Distribution -

Each year, the Vice Chancellor for Access and Diversity will be responsible for the review of the five year plan, annual plan, appropriate state records and laws which outline the formulas for distribution of federal and state funds. The formulas will be reviewed to assure that identified factors, computation of

factors, and importance (weighting) assigned to factors utilized in funding formulas do not discriminate against target populations. All formulas used to distribute federal and state funds to any institution will be reviewed annually for discriminatory factors. The Legal Counsel and Vice Chancellor for Business and Finance for the TBR will assist in the review of funding formulas. The formulas reviewed will affect funding to institutions for the following programs:

- a. Tennessee Technology Centers
- b. community colleges

Results of the review will be reported in the annual report according to the guidelines outlined in Part V of the MOA.

3. Requirements for Admission and Administration -

The Tennessee Board of Regents will review the establishment of requirements for admission to and the administration of vocational education programs to assure that discriminatory factors do not exist and to assure compliance with Title VI, Title VI, and Section 504 of the Rehabilitation Act. The Vice Chancellors for Access and Diversity, Technology Centers, and Academic Affairs will take responsibility for such reviews.

4. Competitive Grants -

Each year, the Vice Chancellor for Vocational Technical Education and Vice Chancellor for Academic Affairs will review criteria utilized for awarding competitive grants to assure that no factors are included which discriminate against target populations. Methods of disseminating information, providing technical assistance, and awarding competitive grants will be reviewed for discriminatory factors. The Legal Counsel for the Tennessee Board of Regents will assist in the review of the policies and procedures. Results of the review will be reported in the annual report according to guidelines outlined in Part V of the MOA.

5. Approval of Action by Local Entities -

Actions initiated by local entities, including AVTSs, community colleges, and technical institutes, are reviewed by members of the TBR Central Staff to insure that local entities do not discriminate against target populations. The Legal Counsel of the TBR will assist in the review. Results will be reported in the annual report according to guidelines outlined in Part V of the MOA.

6. State Operated Institutions -

Each year, the Vice Chancellor for Tennessee Technology Centers will be responsible for the review of the policies and guidelines for area technology centers to assure that policies and procedures do not discriminate against target populations and that the same are in compliance with Sections IV - IX of the OCR guidelines.

The Vice Chancellor for Academic Affairs will be responsible for the review of policies and guidelines for community colleges and technical institutes to assure that they do not discriminate against target populations and that the same are in compliance with Sections IV - IX of the OCR guidelines.

The Director of Access and Diversity and Legal Counsel of the TBR will assist in the review. Results will be reported in the annual report according to guidelines outlined in Part V of the MOA.

B. Method of Review for State Policies and Procedures -

The staff member assigned responsibility for each review will examine each policy and guideline in relation to the OCR guidelines and Title VI, Title VI and Section 504 of the Rehabilitation Act and develop any recommendations for change. The Compliance Director shall coordinate the review of all state policies and be responsible for preparing the annual report to be submitted July 1 each year.

C. State Policy Review Schedule -

The schedule for policy review will begin on September 1 annually and the annual report will be submitted on July 1. The report will identify any significant changes in policies or guidelines that could affect civil rights compliance.

D. Review of State Institutions -

The Tennessee Board of Regents operates 26 Tennessee Technology Centers, and 13 community colleges which are state institutions. These state institutions will comprise a pool of sub recipients which will follow the procedures and schedule outlined in Part IV. The Compliance Director will be responsible for assigning staff to conduct the reviews. Staff from institutions will participate in reviews of institutions other than their own.

If a state operated institution is found to be in non-compliance, the TBR will assume the responsibility to assure voluntary compliance. Results of the reviews will be reported in the annual report according to guidelines outlined in Part V of the MOA.

PART IV ENSURING COMPLIANCE BY SUBRECIPIENTS

A. Statement of Objectives

1. To implement a systematic agency level review procedure to insure that all institutions are reviewed within a five year period in order to identify possible discrimination through periodic review of available state and local data.
2. To design a system for conducting on-site reviews for at least 11% of the systems in the agency level review pool.
3. To develop an on-going technical assistance program for institutions to assist in preventing and eliminating discriminatory policies and procedures.
4. To develop a process for voluntary compliance by institutions found to be in non-compliance.

B. Identification of Possible Institutional Violations through Agency Level Reviews

1. Agency level reviews or desk audits will be conducted by the Division of Access and Diversity, Tennessee Board of Regents. Annually, at least 11% of the sub recipient pool will be scheduled for an agency level review. The Divisions of Tennessee Technology Centers, the Division of Academic Affairs, and the Division of Facilities Management will assist with the audits.
2. The TBR will schedule reviews to reach, at the earliest possible date, those institutions most likely to have compliance problems. Beginning with a pool of all sub recipients, the following will be omitted:
 - a. those previously reviewed (if any) in the five year cycle;
 - b. those that are subjects of pending litigation in Federal or State Courts because of alleged discrimination on the basis of race, color, national origin, sex, or handicap; and

c. those that are subjects of pending or recent investigations or enforcement proceedings by OCR. From those remaining in the pool, the Compliance Program Director will select at least 11% of the total number of institutions using the following factors to determine which are most in need of immediate review:

- a. knowledge of an institution's practices that raise potential civil rights compliance problems;
- b. reports of possible non-compliance obtained from complaints filed by parents, students, civil rights groups or others;
- c. reports from State Civil Rights Agencies or State Advisory Committees that raise questions about potential civil rights compliance problems; and
- d. information or reports on institutions from OCR that indicate possible compliance problems.

3. Conducting the reviews -

a. The Tennessee Board of Regents Staff will conduct agency level reviews of institutions using data and documents already available in its central office. Following are documents and data to be examined in the review:

(a) VETS enrollment data (b) Annual program evaluation reports (c) Annual accountability reports (d) Annual appropriations requests (e) Capital Outlay requests (f) Quarterly enrollment reports (g) Annual analysis of faculty salaries by sex and race (h) Annual affirmative action reports (i) Annual budget analysis detailing promotions and salary distribution (j) Request for new programs (k) Five year plan data and annual update (l) Job Training Coordination Plan and update (m) Information derived from complaints or reports from consumer groups, public agencies, parents, or students (n) Letters of findings issued by OCR (o) EEO complaints (p) Audit reports

b. The agency level review will use the following information as indicators of compliance:

- i. Enrollment ratios comparable to target populations in the service area.
- ii. Constant or positive enrollment trend among target populations.
- iii. Positive trend in employment of target populations.
- iv. Positive trends in data related to graduates or completers among target populations.
- v. Positive trends in opportunities available to target populations in activities and programs of the institution.
- vi. The per-student appropriation of Federal and State funds with respect to the number of minority students in vocational education programs.
- vii. Participation of race, color, national origin (including student of limited English skills), sex, and handicap in apprentice-related programs.

4. Notification of Institutions

a. At the commencement of the agency level review, the Vice Chancellor for Access and Diversity will send a letter to each institution who will undergo an agency level review at least 30 days prior to the start of the review. The letter will outline the purpose of the review, the areas to be reviewed and the date for completion of the review. The letter will also ask the institution to cooperate by supplying any information not in possession of the TBR.

b. Following completion of all agency level reviews and a determination of which institutions will be scheduled for on-site reviews, the Vice Chancellor for Access and Diversity will notify each institution of one of the following courses of action:

- i. that because no violations were shown by the review, there will be no on-site review of the institution that year; but the institution has a continuing obligation to ensure that its programs are operated in compliance with civil rights requirements and may be reviewed by OCR during the year;
- ii. that although the agency level review revealed no apparent problems, the institution will, nevertheless, be the subject of an on-site review; or
- iii. that the agency level review revealed some possible violations (to be listed), and that these specific problem areas, as well as a general review of the institution's operations, will be the subject of an on-site review.

5. Timetable for Agency Level Review

July: Selection of institutions to be reviewed and notification sent to President or Director.

July-August: Information gathered and file prepared on each institution being reviewed.

September: Analysis of information as to compliance.

November: Letters of notification issued indicating results of agency level reviews.

C. Identification of Institutional Violations Through On-Site Reviews

1. Number of Reviews per Year -

An on-site review will be conducted for a minimum of 11% of the institutions in each of the agency level review pools. The agency level review criteria will assign institutions points according to an indicated degree of possible non-compliance. After ranking all institutions by point totals, the sub recipients chosen for an on-site review will be those which receive the lowest point total. Letters of notification will include any areas of concern and offer technical assistance even if the institution is not chosen for an on-site review.

2. Selection of Institutions for On-Site Review

All institutions having indicators of compliance problems during the agency level review will be targeted for on-site review. Agency level findings that will trigger an on-site review include:

- a. Enrollment Ratios - The enrollments of target populations at an institution will be compared to the identified target populations to be served from the service area. This comparison should determine positive or negative ratios of overall service.
- b. Enrollment Trends - Enrollment changes for target populations from 1980-85 will be considered. A positive or negative trend for a particular program area should be determined.
- c. Feeder School Ratios - Concentrations of target populations sent from a feeder high school in relation to available populations at that school will be examined. A positive or negative availability rate will be determined.
- d. Employment Trends - A review of changes in employment of target populations will be made by comparing 1980-85 staffing ratios. A positive or negative trend for employment will be determined.

e. Planning Reports - A review of the data in the five year strategic plan and annual updates which indicates that an institution is not meeting criteria for serving target populations.

If the number of institutions selected for on-site reviews does not equal at least 11% of those selected for agency level reviews, the balance will be selected randomly from the pool of those reviewed at the agency level in that year.

3. Conducting the Review -

The on-site review is designed to further examine the indicators of possible non-compliance and verify indicators of compliance from the agency level review and to consider factors beyond the data examined to determine compliance or non-compliance.

a. The data utilized in the agency level review only indicate possible non-compliance by an institution.

The on-site review will be designed to investigate related factors in order to determine compliance or non-compliance. Examples of areas of further investigation for each criteria are outlined below:

Investigation Criteria Problem Areas

Enrollment ratios;

Disproportionate Methods of enrollments and registration;

Recruitment procedures.

Enrollment trends;

Decreasing enrollments;

Changes in target populations;

registration procedures;

changes in school admission policy.

Feeder School Ratios;

Exclusion of target populations methods of recruitment and registration;

Employment Trends;

Reduction in target population employed;

Employment policies and procedures;

Recruitment and position announcement policies.

Planning Analysis and Reports;

Any signal of non-compliance;

recommendations for changing institutional procedures.

b. Problem areas not addressed in the agency level review -

Depending on the data indicating possible non-compliance, the Compliance Program Director and staff assigned for the on-site review will determine areas of inquiry for the on-site review. The following indicators are examples of areas of inquiry for the on-site review.

i. discriminatory faculty assignments;

ii. failure to provide handicapped student access to programs;

iii. procedures for faculty selection;

- iv. procedures used for notifying the public of the sub recipient's nondiscriminatory policies and practices;
- v. numerical limitations for admission of students to vocational education programs;
- vi. apprentice or other institution limitations for enrollment;
- vii. criteria for admission to vocational education programs where admission depends on, for example, past academic performance, record of disciplinary infractions, counselors' approval, faculty recommendations, interest inventories, high school diplomas, or standardized tests;
- viii. relationships with unions or other agencies providing training;
- ix. special provisions or programs for handicapped students or other special needs students;
- x. relationship of programs for special needs students to total vocational programs;
- xi. programs of financial assistance for students;
- xii. guidance and counseling procedures and activities;
- xiii. written policies and procedures for recruitment and enrollment;
- xiv. placement procedures and opportunities;
- xv. all agency level review findings of compliance will be verified.

5. Timetable

November: Notification of on-site review

February - April: On-site reviews conducted and institution notified of results

May - June: Voluntary compliance plans due.

D. Use of Technical Assistance as a Means of Preventing Civil Rights Violations

A technical assistance program will assist in preventing and detecting discrimination and seeking corrective action. The assistance will be provided by the Tennessee Board of Regents Staff to all levels of postsecondary vocational instruction within the TBR system. The Compliance Program Director will coordinate requests for technical assistance. The program will be designed to provide institutions assistance in the following areas:

- Content and purpose of OCR guidelines
- Components and purpose of MOA
- Data and information requested by institutions relative to discriminatory practices and corrective options.
- Information and guidelines to assist in achieving compliance.

Institutions will be notified of the availability of assistance through correspondence, presentations at meetings, and on an individual basis. The frequency of notification will vary but will occur at least once a year when notification of approval for funding is sent. Technical assistance will be offered as visits from TBR specialists, written information being provided, programs at sub-council or presidents' meetings, training sessions, and questions answered on an individual basis.

Technical assistance will be available to all institutions chosen for an agency level review. Institutions found to be in non-compliance as a result of an on-site review will be offered technical assistance with the development of a voluntary compliance plan.

The following staff of the Tennessee Board of Regents will be responsible for technical assistance activities:

Vice Chancellor for Access and Diversity

Director of Access and Diversity ,Vice Chancellor for Tennessee Technology Centers, Legal Counsel, Tennessee Board of Regents Vice Chancellor for Business and Finance- Vice Chancellor for Academic Affairs

E. Obtaining Voluntary Compliance

1. Development of the Voluntary Compliance Plan

Institutions found to be in violation of the guidelines as a result of an on-site review must agree to take steps to eliminate the violations. The Compliance Program Director will determine if the violations are major or minor and the institutions will comply as follows:

Minor Violations - The Compliance Program Director will have an informal discussion with the institution as to corrective action. The institution may be found to be in compliance by submitting a letter describing corrective action to the Compliance Program Director.

Major Violations - Institutions found to have major violations must submit a voluntary compliance plan describing actions to be taken to eliminate violations and a timeframe for completion. The plan will assume the format of an audit report (findings, recommendations, system reply) and will be submitted to the Compliance Program Director within 60 days of the on-site compliance review notification of findings. The discussions between institutions and Compliance Program Director will be formal and may involve other staff as deemed necessary. The Compliance Program Director will be responsible for assigning appropriate personnel for technical assistance.

Follow-up of Violations - One year after an institution has agreed to remedy violations, the Compliance Program Director will assign the necessary staff to monitor the progress of the institution. Each violation identified in the voluntary compliance plan will be reviewed for progress in meeting desired outcomes. Specifically, indicators identified in Part IV: B.3.b. will be targeted for review.

2. Notification to OCR

The Compliance Program Director will notify the OCR regional office if the following conditions are in existence:

- a. an institution is not in compliance and fails to take corrective action;
- b. the institution fails to submit a voluntary compliance plan (notification of OCR will occur no later than 90 days after on-site review);
- c. the institution submits a plan that is inadequate but is working in good faith with the TBR to remedy deficiencies (notification of OCR will occur no later than 120 days after TBR issued on-site compliance review of findings)

In all cases of notification of OCR, the Compliance Director will describe the efforts made by the Tennessee Board of Regents to secure voluntary compliance.

PART V ANNUAL CIVIL RIGHTS COMPLIANCE REPORT

A report will be submitted by the Tennessee Board of Regents each July 1 to the U.S. Office of Education, Bureau of Occupational and Adult Education for their review and their submission to the Office of Civil Rights.

A. Compliance Organization and Staff

1. Any changes in present personnel as to authority or responsibility.
2. Any changes in organization or personnel.

B. State Policy Review

1. Findings of state policy review.
2. Action taken by the Tennessee Board of Regents to amend and correct any policies or procedures found to have discriminatory effects.

C. Review of State Operated Institutions and Programs

1. Identification of state operated institutions having agency level review.
2. Findings of review of institutions and list of institutions receiving on-site reviews.
3. Copy of voluntary compliance plans for each institution involved.
4. Action taken by the Tennessee Board of Regents to correct any problems identified.

D. Technical Assistance

1. List of institutions requesting technical assistance.
2. Summary of other technical assistance.

E. Institutions Referred to OCR

1. List of institutions referred to OCR for failure to achieve voluntary compliance.
2. Any response from OCR.

F. Monitoring Activities

1. Outline of activities by the Tennessee Board of Regents to monitor corrective action taken by institutions.
2. Any correspondence with OCR as a result of monitoring activities.

Source: June 28, 1985, Tennessee Board of Regents Meeting; May 19, 2009 Presidents Meeting

**Tennessee Board of Regents
Title VI Survey**

PART 1:1. Date of Survey: 2. Type of Survey: ☐ Initial ☐ Annual ☐ Other3. Name of Institution: University TTC
Community College 4. Name of President/Director: 5. Name of Title VI Coordinator: 6. Non-Discrimination Policies: Does your institution have a written policy stating that services will be provided to all persons without regard to race, color, or national origin? ☐ Yes ☐ No7. Posters:A. Are posters with all Title VI information prominently displayed on the campus? ☐ Yes ☐ NoB. Do the posters include the Campus Title VI Coordinator's name, title and telephone number?
☐ Yes ☐ No8. Records: Are permanent records kept of all Title VI complaints in compliance with applicable TBR Policies and TBR Guideline G-070: "Disposal of Records? ☐ Yes ☐ No9. Complaints:A. If your institution received no Title VI complaints during fiscal year 2013-2014, check here: ☐B. For all Title VI complaints (discrimination or harassment based on race, color, and/or national origin) during fiscal year 2013-2014, provide summaries of the complaints(s) in detail. You must include in the summary; (1) date complaint was reported; (2) nature of complainant (i.e. race, color, and/or national origin); (3) the basis for the charge (discrimination, harassment, and/or retaliation); (4) the findings/conclusion of the investigation; and (5) the current status of the complaint (e.g., closed, pending, etc.).**Please omit all names of faculty, staff, students and/or third parties.*

LIST SUMMARIES BELOW:

10. Dissemination:

A. Is Title VI information disseminated to your employees, applicants, students and other beneficiaries of services?

☐ Yes ☐ No

B. If yes, describe how all beneficiaries are informed:

11. Notice of Title VI Rights: How are all beneficiaries made clearly aware of their rights under Title VI, including the right to file a complaint?

12. Employee Training:

A. Are new employees clearly informed about their specific responsibilities to recipients of services under Title VI?

☐ Yes ☐ No

B. Were all of your campus' employees trained during fiscal year 2013-2014 regarding information detailing their Title VI responsibilities?

☐ Yes ☐ No

C. By whom and how is Title VI employee training conducted?

13. Compliance Assurance: Do all contracts for services contain a Title VI statement of compliance as required by TBR Guideline G-030: "Contracts and Agreements"?

☐ Yes ☐ No

14. Physical Access to Facilities: Are all physical areas (residence halls, dining areas, rest rooms, etc.) provided and used without regard to race, color, or national origin of beneficiaries?

☐ Yes ☐ No

15. Legal Advice: Does your institution routinely contact the TBR Office of General Counsel (or campus legal counsel, if applicable) for legal advice during the investigation of a complaint based on race, color, or national origin discrimination, harassment and/or retaliation as required by TBR Guideline P-080: "Harassment – Sexual or Racial"?

☐ Yes ☐ No

Declaration of Respondent

I declare that I have completed the data in this survey and to the best of my knowledge and belief, it is true, correct, and complete.

Name & Position of Person Completing Form

Signature:

Declaration of Administrative Head

I declare that I have reviewed and approved the information provided in this self-survey and to the best of my knowledge and belief, it is true, correct, and complete.

Printed Name: President / Director

Signature:

PART 2:

CHECKLIST FOR

Title VI Compliance Status

Instructions to Equity Officer: Use this checklist to assess the self-survey to ascertain Title VI Compliance. If you decide not to certify compliance status, then your institution has a duty to follow up on any deficiencies which affected that decision and report them to the TBR Office of .

Name of Institution:

1. Services from this institution are provided to employees, applicants, students and other parties without regard to race, color, or national origin.
2. An employee has been appointed to serve as Title VI Local Coordinator for the institution.
3. A written procedure exists for hearing Title VI complaints for all parties.
4. Records are maintained regarding all alleged cases of discrimination.
5. Title VI posters are prominently displayed and are used to emphasize the Title VI program and complaint procedures.
6. All employees are trained annually about their responsibilities under Title VI.
7. New employees are clearly informed about their responsibilities under Title VI.
8. Contracts between the institution and vendors / sub-contractors contain provisions regarding the vendor / sub-contractor responsibilities to clients under Title VI standards.
9. A process for providing access to Limited English Proficiency (LEP) individuals is in place and is regularly used.

Printed Name of Reviewer: Title VI Coordinator

Signature of Reviewer: Title VI Coordinator

Status: All questions answered yes and compliance is certified by signature.

If no, submit necessary documentation to state reason(s) for non-compliance and measures to be taken. Also, list the number of times the LEP policy procedures were used during 2013-2014 year.

TITLE VI CAMPUS POSTER

The Tennessee Board of Regents
Provides EQUAL OPPORTUNITY
in all programs
Receiving Federal Financial Assistance



Title VI of the Civil Rights Act of 1964 is the Federal law that protects individuals from the discrimination on the basis of their race, color, or national origin in the programs that receive Federal financial assistance.

If you feel that you have been discriminated against in any Tennessee Board of Regents sponsored program, contact the Title VI coordinator on your campus.

Facilities, programs and services sponsored by the Tennessee Board of Regents are available to all eligible persons regardless of race, color, national origin, age, sex or disability.

The Title VI Coordinator
for your campus is:



Title VI of the
Civil Rights Act
of 1964

"Simple justice requires that public funds to which all taxpayers of all races contribute not be spent in any fashion which encourage, entrenches, subsidizes or results in racial discrimination."

President John F. Kennedy,



The Tennessee Board of Regents is an Equal Opportunity Employer
1415 Murfreesboro Road, Suite 350, Nashville, TN 37217

TENNESSEE BOARD OF REGENTS MEMBERS

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Policy 3:04:01:00

Subject: Student Scholarships, Grants, Loans, and Financial Aid Programs

This policy covers the establishment of and participation in student scholarship and financial aid programs by TBR universities, community colleges, and technical institutes. (TTCs are covered by separate policy.)

I. Federal, State and Private Financial Aid, Loan, and Scholarship Programs

A. All institutions are hereby authorized to participate in any private, federal, or state programs providing financial aid, loans, scholarships, grants, and other forms of educational assistance to students. Institutions must meet the eligibility requirements for participation and comply with all federal and state laws and regulations related to said programs.

B. In participating in educational assistance programs, institutions shall comply with all applicable laws. Institutions may participate in publicly or privately funded educational assistance programs which provide preference on the basis of race, color, creed, sex, handicap, age, religious preference, veteran's status, or national origin in the selection of students or awards to students, but only where the aggregate of all such participation is non-discriminatory and after consultation with legal counsel. Institutions may participate in any educational assistance programs provided by the federal government or the State of Tennessee for affirmative action or diversity purposes in furtherance of the institution's affirmative action and or diversity plan.

II. Institutional Scholarships and Grant Programs

A. General Parameters

1. State appropriations shall be expended or applied only to Access and Diversity grants.

2. Each institution is authorized to employ students under local work programs, and each university is authorized to employ students and graduate assistants pursuant to Board Policy No. 5:02:05:00.

3. Institutions may award scholarships and grants, in any of the programs listed below in Sections II. C. and D., to students who are full-time, part-time, out-of state, or Tennessee residents.

4. The maximum amount of an individual academic service scholarship awarded for any one semester or summer session shall be the amount of the maintenance fees (and/or out-of-state tuition) for the semester or summer session plus an allowance for books and supplies. The maximum books and supplies allowance shall be commensurate with the book and supply allowance component of the standard student budget compiled by the institution's financial aid officer. The maximum amount that may be awarded to any individual during a single fiscal year shall not exceed the total amount of combined fees and book allowances defined herein. For the purposes of this policy, maintenance fees (and/or out-of-state tuition) shall be defined as all mandatory fees payable by a student for continued enrollment at the institution, including but not limited to debt service fees, student activity fees, and registration fees. The maximum amount awarded to a part-time student shall be prorated based on the number of hours for which the student is enrolled. Refunds shall be handled in accordance with TBR refund policy outlined in TBR Guideline B-060. The provisions of this section do not apply to privately funded scholarships or grants.

5. Each institution shall establish specific criteria for the scholarship programs listed below in Sections II. C. and D. Such criteria must meet the minimum limitations set forth in this TBR policy; however, the institution may set criteria which is more restrictive than the TBR policy. The written procedures implementing this policy and all requirements for eligibility, maintenance, and renewal shall be clearly published in the official catalog of the institution.

B. Funding Sources for Scholarships and Grant Programs

1. Academic Scholarships and Institutional Grants may be funded by a maximum of 10% of total tuition and fees received by the institution in any one year. An exception to this limitation may be made upon approval of the Chancellor and subsequent approval of the budget by TBR.

2. Athletic and Performance Grants may be funded by private contributions, donations, endowment earnings designated for scholarships and grants, revenues derived from the activities in which the student participates, and student fees specifically programmed and approved for such assistance.

3. Access and Diversity Grants shall be funded by state funds and may be supplemented by other campus revenue sources.

4. Academic Work Scholarships in the College of Medicine (ETSU) may be funded by a maximum of 10% of total tuition and fees received by the College of Medicine in any one year.

C. Scholarship and Grant Programs Requiring Service to the Institution

1. ATHLETIC GRANTS

(a) Each institution is authorized to award grants for students involved in athletics.

(b) Grants for athletes awarded by institutions shall be subject to applicable limitations imposed by any national, regional, or other conference or association of which the institution is a member.

(c) The requirement of service to the institution is satisfied by student performance of athletic endeavors.

2. PERFORMANCE GRANTS

(a) The institution may award grants to students who perform a service to the institution, such as band members, cheerleaders, spirit squad members, staff of student newspapers and yearbooks, etc.

(b) The service requirement is fulfilled by the performance of the activity by the student.

3. OTHER INSTITUTIONAL GRANTS

(a) Institutional Grants may be provided for meeting affirmative action and minority recruitment goals.

(b) Institutional Grants may be provided for assisting handicapped, physically disadvantaged, and economically disadvantaged students.

4. ACADEMIC SERVICE SCHOLARSHIPS

(a) Awards to first-time freshmen shall be limited to students who had a minimum high school average of 2.9 or the equivalent. In addition, first-time university freshmen shall have a minimum enhanced ACT composite score of 19 to be eligible for consideration. Awards to GED students shall be based upon evidence of comparable scholastic ability. Institutions may make exception to the requirements of this paragraph when admitting freshmen who have not attended high school or another postsecondary institution for at least four years.

(b) Awards to transfer and other than first-time freshman students will require a minimum cumulative college GPA of 2.9 for universities and 2.5 for two year colleges earned on the basis of at least twelve (12) credit hours. Students who have completed less than twelve (12) credit hours shall, for the purposes of this policy, be considered first-time freshmen.

(c) Renewal of academic service scholarships after the initial academic year of the freshman shall require a minimum GPA of 2.5. All subsequent renewals shall require a minimum semester GPA of 2.5 for students of both universities and two year institutions.

(d) Awards of academic service scholarships shall be made on a semester basis. Failure to maintain the required grade-point average or a satisfactory standard of conduct will result in the automatic forfeiture of the scholarship. A student who forfeits his/her scholarship for any of the above reasons may be eligible for consideration after the lapse of at least one full semester.

Exceptions to this provision may be made when approved by the institution's president or his/her designee.

(e) Economic status and need of the applicant will be considered a favorable factor only when all other conditions appear equal. Consideration may be given to the student's potential for the future as well as his or her area of specialization in relation to the needs of the state and the nation.

(f) An Academic Service Scholarship shall involve a service obligation to the institution of 75 hours per semester. The service obligation will be structured to primarily provide an educational benefit to the student, not a work benefit to the institution. The service requirement for part-time and summer session students shall be prorated based on the number of hours for which the student is enrolled.

5. ACADEMIC WORK SCHOLARSHIPS (in the College of Medicine - ETSU)

(a) Awards shall be made to incoming freshmen who are Tennessee residents, present an MCAT score of 9.0 or better and a "P" in writing skills, and have an undergraduate GPA of 3.3 or better.

(b) Students are ineligible for the Academic Work Scholarship if they are a recipient of a grant or award from the Armed Forces, NHSC, THEC, or under contractual obligation for practice after residency. Likewise, students who receive funding from CWSP or RSWP (work programs) or who hold a salaried position at ETSU are ineligible for a TBR scholarship.

(c) The award will be for tuition plus book stipend. No award will exceed total in-state fees, debt service, student activity, registration, and a book allowance commensurate with the educational cost allowance for all other students.

(d) Scholarship recipients must earn at least a 3.0 GPA to qualify for renewal awards. In addition, recipients must earn overall GPA and progress normally through the curriculum as defined by Title IV "satisfactory academic progress" regulations to maintain the scholarship or qualify for renewal awards.

(e) Recipients must work not less than 300 hours per calendar year. Activities will include but not be limited to participation in research projects, generation of publications, support of activities related to increased extramural findings, and other scholarly activities as deemed appropriate by the Special Research Project Review Committee. This Committee, made up of basic scientists, clinical practitioners/research and research project administrators, will oversee the selection of and assignments to work-study projects.

D. Grants Which Do Not Require Service to the Institution

1. Access and Diversity grants may be provided to students in order to achieve diversity plan objectives.
2. Students receiving Access and Diversity grants are not required to provide service to the institution.
3. Students enrolled in institutional Honors programs which require significant enrichment activities by the student over and above normal course requirements are not by this policy required to provide service to the institution.
4. Students receiving privately-funded or publicly-funded scholarships which require an institutional match are not by this policy required to provide service to the institution.

Source: SBR Meetings: December 8, 1978; March 18, 1983; September 30, 1983; June 29, 1984; June 29, 1990; December 11, 1992; March 30, 2001; April 2, 2004; June 30, 2006; June 19, 2009; TBR Board Meeting September 25, 2009