



TENNESSEE BOARD OF REGENTS

**COMPLIANCE REVIEW AND IMPLEMENTATION PLAN
FOR
TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972
2013-2014**

John G. Morgan, Chancellor

October 1, 2014

CONTENTS

Part 1. Overview of the Tennessee Board of Regents Title IX Enforcement Program

- I. Overview of the Tennessee Board of Regents System**
- II. Federal programs or activities**
- III. Organization and Designation of Title IX Coordinator**
- IV. Statement of Policies and Applicability of Title IX**
- V. Title IX Definitions (Federal Law & TBR Policy)**
- VI. Staff and Budgetary Resources for Title IX Compliance**
- VII. Civil Rights / Title IX Training**

Part 2. Tennessee Board of Regents Approach to Major Civil Rights Functions

- I. Title IX Statement of Assurance**
- II. Public Notification of Nondiscrimination Policies**
- III. Title IX Compliance Reviews**
- IV. Complaints of Discrimination Based on Sex**
- V. Title IX Data Collection and Analysis**
- VI. Compliance Reporting**
- VII. Implementing Title IX Compliance**

Attachments

- Attachment 1. 13-14 TBR Statement of Revenues, Expenditures & Changes in Net Assets –To be provided**
- Attachment 2. 13-14 TBR Report of Small, Minority & Women Owned Businesses**
- Attachment 3. TBR Policy 2:02:10:01, Sex Discrimination & Sexual Harassment**
- Attachment 4. TBR Institutional Title IX Coordinators (as of Sept. 2014)**
- Attachment 5. TBR Policy 5:01:02:00, Equal Employment Opportunity, & Affirmative Action**

- Attachment 6. TBR Policy No. 1:03:02:10, Approval of Agreements**
- Attachment 7. TBR Policy No. 3:03:01:00, Student Residence Regulations**
- Attachment 8. Policy No. 3:04:01:00, Student Scholarships, Grants, Loans, Financial Aid Programs REVISED 2013-14**
- Attachment 9. Policy No. 3:04:01:01, Student Scholarships, Grants, Loans, and Financial Aid Programs At Technology Centers**
- Attachment 10. TBR Policy 4:02:10:00, Purchasing Policies and Procedures Complaint and Investigation Procedure REVISED 2013-14**
- Attachment 11. Guideline G-120, Method of Administration for Compliance with Office of Civil Rights Guidelines, Title VI, Title IX, & Section 504**
- Attachment 12. TBR Guideline P-080, Discrimination & Harassment REVISED 2013-14**
- Attachment 13. TBR Guideline No. P-110, Employee Grievance/Complaint Procedure**
- Attachment 14. TBR Guideline G-030, General Instructions on Forms and Execution of Contracts REVISED 2013-14**
- Attachment 15. Title IX Compliance Annual Institution Report**
- Attachment 16. TBR Title IX, Workload and Performance Data/ Complaints for FY 13-14**

PART 1

OVERVIEW OF THE TENNESSEE BOARD OF REGENTS **TITLE IX ENFORCEMENT PROGRAM**

I. Overview of the Agency

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 comprised of six universities, thirteen two-year institutions, 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.

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.

Upon recommendation of the Tennessee Higher Education Commission, the Tennessee General Assembly appropriates funds to the TBR institutions. Federal funds are also received by the institutions for grant program assistance. Federal funds are also available to students for financial aid. The 2013-14 TBR Statement of Revenues, Expenditures & Changes in Net Position will be sent as addendum by November 15, 2014. TBR also keeps record of the number of women-owned businesses that it has made awards to in the past year. (Attachment 2)

II. Federal programs or activities

The TBR System Office receives \$1,510,403.15 in federal funds for the Small Business Association funding for the Tennessee Small Business Development Center, located at Middle Tennessee State University. In contrast, student financial aid assistance is available directly from the federal agency to the student. All contractual agreements must contain a "nondiscrimination clause", as defined in TBR Guideline G-030, “Contracts and Agreements.” 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.

III. Organization and Designation of Title IX Coordinator

TBR Policy No. 2:02:10:01, “Sex Discrimination and Sexual Harassment” requires the system office and each institution to designate an employee as the Title IX Coordinator to

ensure Title IX Acts and Regulation compliance at each institution. TBR Policy No. 2:02:10:01 is attached as Attachment 3. The current list of Title IX Coordinators at each TBR institution and the central office is attached as Attachment 4.

IV. Statement of Policies and Applicability

It is the Tennessee Board of Regents' intent that its institutions shall fully comply with Title IX 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). Policy No. 2:02:10:01 Sex Discrimination and Sexual Harassment (Attachment 3) provides protection against Sexual Discrimination:

“Pursuant to Title IX of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act, and Regulations adopted pursuant thereto, no institution or school shall discriminate on the basis of sex in the education programs or activities of the institution or school, including health-related training programs. Institutions and schools 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, Equal Employment Opportunity and Affirmative Action, each institution and school shall ensure that no person, on the basis of sex, is excluded from participation, 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.”

Furthermore, the Tennessee Board of Regents, pursuant to Title IX of the Education Amendments of 1972 and regulations adopted pursuant thereto, provides protection against Sexual Harassment:

“..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.”

Specifically with regard to employment, TBR Policy 5:01:02:00, “Equal Employment Opportunity and Affirmative Action” (Attachment 5) provides:

“The Board of Regents hereby reaffirms the policy of the Tennessee Board of Regents System, and all institutions and schools included therein, that the System will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (except where sex is a bona fide occupational qualification), age or because of their status as a qualified veteran with a disability or veteran of the Vietnam era.

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 nor denied the benefits of any educational program on the basis of a protected status.”

Other related policies with Title IX enforcement implications include:

- Policy No. 1:03:02:10 Approval of Agreements (Attachment 6)
- Policy No. 3:03:01:00 Student Residence Regulations and Agreements (Attachment 7)
- Policy No. 3:04:01:00 Student Scholarships, Grants, Loans, Financial Aid Programs (Attachment 8)
- Policy No. 3:04:01:01 Student Scholarships, Grants, Loans, and Financial Aid Programs At Tennessee Colleges of Applied Technology (Attachment 9)
- Policy No. 4:02:10:00 Purchasing Policies and Procedures (Attachment 10)
- Guideline No. G-120 Method of Administration for Compliance with Office of Civil Rights Guidelines, Title VI, Title IX, and Section 504 (Attachment 11)
- Guideline No. P-080 Discrimination & Harassment - Complaint & Investigation Procedure (Attachment 12)
- Guideline No. P-110 Employee Grievance- Complaint (Attachment 13)

TBR policies and guidelines are published and available on each campus, as well as on the Internet at the Tennessee Board of Regents’ website: <https://policies.tbr.edu/> . The policies and guidelines are also printed in campus publications, (including the institutional catalogues, student handbooks, faculty and staff handbooks, etc.). Additionally, job advertisements and student applications for admission contain notices of the TBR’s nondiscrimination policies as required by TBR Policy No. 2:02:10:01.

V. Title IX 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 IX 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.

Gender Equity: "Gender equity" means equal athletic opportunity for members of both sexes as provided in 34 CFR §106.41.

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

Sexual Harassment: "Harassment", including sexual harassment, is defined in TBR Guideline P-080 Discrimination & Harassment as:

B. Harassment – based on a protected class 1. Harassment is conduct that is based on a person's race, color, religion, creed, ethic 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.

Examples of Sexual Harassment are also included in P-080

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

In addition, P-080 notes:

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.

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: The campuses 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.

VI. Staff and Budgetary Resources

Under TBR Policies 5:01:02:00 (Attachment 5) and 2:02:10:01 (Attachment 3), the Chancellor has designated the Assistant Vice Chancellor for Human Resources as the TBR system coordinator for Title IX compliance. The president/director of each TBR institution also has named a Title IX coordinator for that institution (Attachment 4). Generally, this is the Affirmative Action officer. The Title IX coordinators are charged with evaluating the Title IX compliance efforts of the institution, coordinating compliance activities, and investigating (or ensuring investigation) of complaints by students, employees or other personnel on violations of Title IX.

Budgetary resources devoted to Title IX compliance include, but are not limited to, the budget allocated at each institution and the system office for training and development, for affirmative action, for student financial assistance, and for appropriate personnel and programs.

VII. Training

The TBR on-line training can be used for new employee orientation and also as a refresher course for continued training. Information is provided regarding discrimination and sexual harassment to each new employee by the institution's Human Resources Office. Additionally, each new employee receives a copy of TBR Guideline P-080 regarding sexual harassment. In addition, Title IX coordinators may provide other forms of training as deemed appropriate.

In July 2013, TBR launched an on-line Respectful Workplace training tutorial for employees that was designed in-house. Additionally, an on-line Sexual Harassment training was created in September 2013. The training tutorials explain the federal laws and TBR policies regarding discrimination and sexual harassment; various types of inappropriate behavior; and how to report inappropriate / harassing behavior. The login to this training can be found at:

<https://elearn.tbronline.org>

The training provides an updated approach to communicating the information, including incorporating pre and posttests, various scenarios, and videos. Each campus Title IX officer is given the flexibility to establish his/her own schedules for refresher course training. As a result, the number of annually trained TBR employees will vary from year to year.

In addition, the TBR Office of General Counsel has provided numerous related trainings on the campuses. The training covered the legal requirements, the TBR policies and guidelines, and discussing different scenarios.

PART 2
TENNESSEE BOARD OF REGENTS
APPROACH TO MAJOR CIVIL RIGHTS FUNCTIONS

I. Statements of Assurance

Under TBR Policy No. 4:02:10:00, attached as Attachment 10, and the related Guideline G-030 (Attachment 14), assurance statements regarding the prohibition against unlawful discrimination based on sex are required in relevant contracts entered between TBR institutions and sub-recipients.

II. Public Notification

As required by TBR Policy No. 2:02:10:01 (Attachment 3), a public notice of nondiscrimination is included in each catalogue, bulletin, application form, advertisement, newspaper, magazine, etc.

Posters are placed in several locations on each campus containing nondiscrimination language and who to contact to lodge a complaint. A Title IX Fact Sheet is available and posted at TBR institutions.

III. Compliance Reviews

Tennessee Code Annotated § 4-4-123 requires state agencies subject to Title IX to develop implementation plans for its enforcement.

TBR institutions endeavor to ensure pre-award compliance by sub-recipients annually in writing. The survey instrument, "Tennessee Board of Regents –Title IX Compliance Survey," developed by TBR for that purpose is attached as Attachment 15. Further investigation will be conducted if evidence of non-compliance is found.

Investigations and resolution of non-compliance, when necessary, will be conducted in accordance with 34 CFR § 100.7 - § 100.11.

IV. Complaints of Discrimination

TBR has a grievance policy for employees and students to complain of discrimination based on sex pursuant to the policy outlined in TBR Guideline P-080 (Attachment 12).

The "Title IX Workload and Performance Data Report" (Attachment 16) outlines all Title IX complaints filed by individuals at a TBR institution during the 2013-2014 fiscal year.

V. Data Collection and Analysis

TBR and its institutions collect the sex and race of all employees (including administrators), as provided on a voluntary basis by each applicant for employment. Employment data is collected and analyzed for any underutilization in the affirmative action reports compiled annually at each institution.

VI. Compliance Reporting

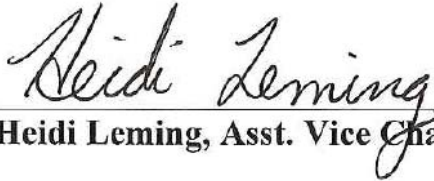
Copies of assurances, training materials, data collection and participation records, monitoring records, and pertinent correspondence are maintained at each TBR institution.

VII. Implementing Compliance

TBR's compliance with Title IX is implemented through the compliance reviews and grievance procedures outlined in Part 2 III and IV of this plan.

TBR Guideline G-120 (Attachment 11) establishes the methods of administration for compliance with the Office of Civil Rights Guidelines, including Title IX, Title VI and Section 504 for the Vocational Technical Education Division of the Tennessee Board of Regents. The Compliance Director is responsible for review of programs to assure that policies and procedures do not discriminate on the basis of race, color, national origin, sex and handicap, as required by 34 CFR Part 100.

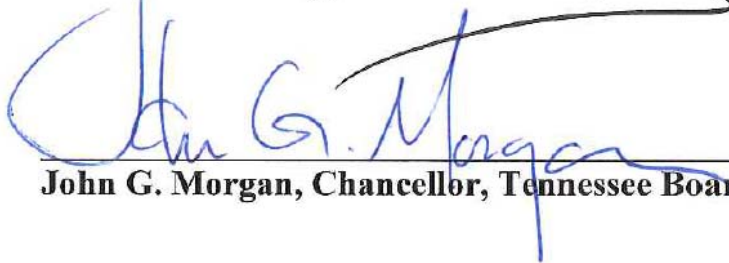
VIII. Responsible Parties

Handwritten signature of Heidi Leming in black ink.

Dr. Heidi Leming, Asst. Vice Chancellor for Student Affairs

Handwritten signature of Tristan Denley in black ink.

Dr. Tristan Denley, Vice Chancellor, Academic Affairs

Handwritten signature of John G. Morgan in blue ink.

John G. Morgan, Chancellor, Tennessee Board of Regents



ATTACHMENT 1

(TBR Statement of Revenues, Expenditures & Changes in Net Position)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

TENNESSEE BOARD OF REGENTS		
Unaudited Statement of Revenues, Expenses, and Changes in Net Position		
For the Year Ended June 30, 2014		
	System	Component Units
REVENUES		
Operating revenues:		
Student tuition and fees (net of scholarship allowances of \$358,996,044.11)	\$ 699,551,955.95	\$ -
Gifts and contributions	-	47,849,097.65
Endowment income (per spending plan)	-	3,657,515.14
Governmental grants and contracts	164,792,797.09	737,707.40
Non-governmental grants and contracts, including \$3,333.00 from component units	18,338,161.75	813,486.33
Sales and services of educational activities	31,757,925.14	2,450.00
Sales and services of other activities	85,101,339.03	386,120.80
Patient charges	-	36,304,715.00
Auxiliary enterprises:		
Residential life (net of scholarship allowances of \$12,520,785.98; all residential life revenues are used as security for revenue bonds, see Notes 10 & 12)	62,888,714.47	-
Bookstore (net of scholarship allowances of \$2,279,968.37)	9,467,906.26	-
Food service	13,383,139.37	-
Wellness facility (net of scholarship allowances of \$1,301,470.87; all wellness facility revenues are used as security for revenue bonds, see Notes 10 & 12)	5,709,136.90	-
Other auxiliaries	20,867,413.35	6,261.78
Interest earned on loans to students	690,755.37	-
Other operating revenues, including \$533,661.00 from MEAC to the ETSU Foundation	3,163,625.92	3,250,473.21
Total operating revenues	1,115,712,870.60	93,007,827.31
EXPENSES		
Operating Expenses (Note 19)		
Salaries and wages	1,069,059,249.01	24,540,302.26
Benefits	390,289,429.38	2,649,511.91
Utilities, supplies, and other services	521,676,283.19	17,422,946.89
Scholarships and fellowships	288,105,532.22	9,815,027.50
Depreciation expense	123,007,872.93	1,325,431.28
Payments to or on behalf of component unit	-	40,745,842.51
Total operating expenses	2,392,138,366.73	96,499,062.35
Operating income (loss)	(1,276,425,496.13)	(3,491,235.04)
NONOPERATING REVENUES (EXPENSES)		
State appropriations	683,553,759.04	-
Gifts, including \$31,895,870.84 from component units to institutions	38,106,548.02	-
Grants and contracts	543,732,770.70	43,674.27
Investment income (net of investment expense of \$179,309.47 for the system and \$1,202,876.67 for component units)	7,348,916.28	60,595,231.08
Interest on capital asset-related debt	(25,445,567.84)	(135,761.74)
Bond issuance costs	(678,287.44)	-
Payments to or on behalf of ETSU or ETSU Foundation	-	(2,877,615.00)
University/College support (Note 24)	-	2,331,311.53
Other non-operating revenues/(expenses)	1,155,250.72	104,289.26
Net nonoperating revenues	1,247,773,389.48	60,061,129.40
Income before other revenues, expenses gains, or losses	(28,652,106.65)	56,569,894.36
Capital appropriations	130,262,770.10	-
Capital grants and gifts, including \$10,306,080.67 from component units	18,516,365.23	2,685,753.37
Additions to permanent endowments	88,119.95	13,663,852.28
Total other revenues	148,867,255.28	16,349,605.65
Increase (decrease) in net position	120,215,148.63	72,919,500.01
NET POSITION		
Net position - beginning of the year	2,457,331,876.29	553,465,603.71
Prior period adjustment (Notes 20 and 24)	9,577,829.36	7,369,258.31
Net position - end of year	\$ 2,587,124,854.28	\$ 633,754,362.03
The notes to the financial statements are an integral part of this statement.		



ATTACHMENT 2

(TBR Small, Minority and Women Owned Business Report)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

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.						



ATTACHMENT 3

(Sex Discrimination and Sexual Harassment Policy)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Sex Discrimination and Sexual Harassment: 2-02-10-01 ¹

Policy/Guideline Area

Academic Policies

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

It is the intent of the Tennessee Board of Regents that the institutions under its jurisdiction shall fully comply with Title IX 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 the Board to assist the institutions in such compliance.

Policy/Guideline

1. Sex Discrimination

1. It is the policy of the Tennessee Board of Regents that, pursuant to Title IX of the Education Amendments of 1972, Sections 799A and 845 of the Public Health Service Act, and Regulations adopted pursuant thereto, no institution shall discriminate on the basis of sex in the education programs or activities of the institution, including health-related training programs.
2. Institutions 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;

¹ Policy 2-02-10-01 was revised at the September 26, 2014 to TBR Policy 6:02:00:00. A revised copy will be included in the 2014-15 Compliance Report or can be accessed online at: <https://policies.tbr.edu/>. TBR Policy 6:001:00:00 and 6:03:00:00 are new TBR policies approved on September 26, 2014.

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.

3. In addition, in conjunction with Board Policy No. 5:01:02:00, each institution 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.

4. 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

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

3. Procedures

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

1. Each institution 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 IX 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.
 2. The policy statement shall include the name and address of the employee or employees designated pursuant to Section III.A.1., to whom inquiries concerning the application of the above Acts or the Regulations adopted pursuant thereto may be directed.
 3. Each institution 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 1. of this item.
 4. The policy statement adopted pursuant to section 1. of this item shall be published in the following publications:
 1. Local newspapers;
 2. Newspapers and magazines operated by the institution or by student or alumni groups;
and
 3. Memoranda or written communications to every student and employee of the institution.
 5. In addition, each institution 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.
1. Each institution 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 education programs and activities.

2. Each institution shall modify any policies and practices which do not meet the requirements of Title IX, 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 IX, the Public Health Service Act, and the Regulations issued pursuant thereto.

Sources

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



ATTACHMENT 4

(Title IX Coordinators—as of September 2014)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

TBR TITLE IX COORDINATORS 2013-2014

Name	Institution
Sheila Bryant	APSU
Jerome Gober	Chattanooga
Joan Bates	Cleveland
Randy Elston	Columbia
Sheila Gillahan	Dyersburg
Mary Jordan	ETSU
Amy West	Jackson
Margie Williamson	Memphis
Laura Jent	Motlow
Marian Wilson	MTSU
Lori Maddox	Nashville State
Leigh Hornsby	Northeast
Karen Queener	Pellissippi
Odell Fearn	Roane
Paul Thomas	Southwest
Tiffany Cox	TN State
Marlene Hall	TN Tech
Tammy Goode	Walters

TENNESSEE COLLEGES of APPLIED TECHNOLOGY

Kim Davis	Athens
Jerome Gober	Chattanooga
Cristi Hill	Covington
Glenn Baker	Covington
Jerry Young	Crossville
Henrietta Lusk	Crump
Gary Fouts	Dickson
Mike Cole	Elizabethton
Sandy Aston-Wash	Harriman
Jonathan Smallwood	Hartsville
Kelli-Kea Carrol	Hohenwald
Amy West	Huntsville/Oneida
Rita Broyles	Jacksboro
John Hodgson	Jackson
Kasey Vatter	Knoxville
Joel Chappell	Livingston
John Penn Ridgeway	McKenzie
Marvin Lusk	McMinnville

Diana Wilkerson	Memphis
Jerry King	Nashville
Efferd Barrett	Morristown
Judy Henegar	Murfreesboro
Donnie Walton	Newbern
Willie Huffman	Paris
Stephen Milligan	Pulaski
Belinda Douglas	Ripley
Jim Potts	Shelbyville
Jacquene Walker	Whiteville



ATTACHMENT 5

(Equal Employment Opportunity & Affirmative Action Policy)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Equal Employment Opportunity and Affirmative Action: 5-01-02-00

Policy/Guideline Area

Personnel Policies

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The purpose of this policy is to set the standards for a consistent process and treatment of employees regarding equal employment opportunity and affirmative action across the TBR system.

Policy/Guideline

1. Introduction

1. It is the intent of the Tennessee Board of Regents that the Board of Regents 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.
2. It is the intent of the Board that each campus of the Board 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 IX of the Education Amendments of 1972, as amended, the federal and state constitutions, and all other applicable federal and state statutes.

2. Statement of Policy

1. The Board of Regents hereby reaffirms the policy of the Tennessee Board of Regents System, and all institutions 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.
2. 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.
3. 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 sponsored training, education, tuition assistance, and social and recreation programs, will be administered without regard to any of the foregoing prohibited factors.

4. 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.

3. Administrative Responsibility

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

1. The Chancellor shall designate the person on the staff of the Board 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 System Office.
2. The Chancellor shall direct the President and/or Director of each institution to appoint an EEO/AA Officer for the institution.
3. The Chancellor shall furthermore ensure participation in Board approved access and diversity initiatives.
4. The Chancellor shall insure that the following actions occur:
 1. Equal Employment and Affirmative Action
 1. 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 System Office shall prepare the System Office affirmative action plan.
 2. The system EEO/AA Officer will review and evaluate the success of the equal employment opportunity and affirmative action programs in the System Office and on each campus and make recommendations to the Chancellor concerning desirable changes.

3. The institutional EEO/AA Officer and the TBR System Office EEO/AA Officer will receive, review, and investigate institution and system 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 system Office complaint.

2. Harassment

1. Depending on the locus of the complaint, the Chancellor and Presidents/Directors are responsible for the final resolution of a harassment complaint.

2. The Chancellor shall insure the following actions occur:

1. Investigation of Harassment Complaints

1. The Chancellor shall designate the Tennessee Board of Regents' General Counsel to supervise the investigation and give legal advice to the institution or system Office EEO/AA Officer who will receive, review, and investigate all charges of harassment arising from their institution or office.
2. The institution or system 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.
3. It is the intent of this policy that the review and investigation process conducted by the campus or System 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.

2. Resolution of Harassment Complaints

1. The Chancellor and the Board have designated the institution or System 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

1. 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.

2. Duties of the President/Director

1. Each institution President or 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.

3. Duties of the EEO/AA Officer

1. Equal Employment Opportunity and Affirmative Action Program

1. The EEO/AA Officer will develop and maintain an EEO/AA program which shall include but not be limited to the following responsibilities:
 1. The institution/System 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.
 2. Equal employment opportunity or affirmative action complaints made to external agencies, i.e. EEOC or THRC, will be investigated by the institution or system 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.
 3. The EEO/AA Officer will develop and maintain an EEO/AA program which shall include:

1. Developing or reaffirming the institution'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.
-
4. 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

1. Each institution and System Office EEO/AA Officer will be responsible for implementing Guideline P-080 Discrimination and Harassment – Complaint and Investigation Procedure.
2. The EEO/AA Officer will assure the development of an educational program alerting students and employees to the non-harassment policy and guideline.
3. Under the direction and guidance of the TBR General Counsel, the institution or system Office EEO/AA Officer will investigate all harassment complaints. The institution or System 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.
4. 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.

Sources

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.



ATTACHMENT 6

(Approval of Agreements)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Approval of Agreements : 1-03-02-10

Policy/Guideline Area

Governance, Organization, and General Policies

Applicable Divisions

TCATs, Community Colleges, Universities

Purpose

The following policy on the approval of agreements is adopted by the Tennessee Board of Regents (TBR) to expressly provide for the approval process and requirements concerning agreements with institutions governed by the TBR, and to delegate to the presidents of the institutions certain authority deemed necessary and appropriate for the efficient administration of the institutions.

Policy/Guideline

1. Approval Processes

1. The following agreements and contracts shall be expressly subject to the approval of the Chancellor or designee:
 1. All agreements and contracts involving or related to the purchase or disposal of real property, capital outlay projects, insurance or agreements providing insurance or other benefits.
 2. All agreements involving or related to the lease (institution as lessee) of real property for more than five (5) years or more than \$15,000 per year.
 3. All agreements involving or related to the leasing of institutional property for more than five (5) years or more than \$15,000 per year.
 4. All personal, professional and consultant service agreements required to be submitted to the System Office for approval by guidelines developed pursuant to this policy.

5. All agreements and contracts involving or related to the purchase of data processing equipment required to be submitted to the System Office for approval by guidelines developed pursuant to this policy.
 6. All agreements in which the TBR is a named party.
 7. Any other agreement required to be submitted to the System Office for approval by other TBR policies or guidelines.
2. No agreement of any nature which requires the expenditure of funds by an institution shall extend beyond the end of the fiscal year in which it is entered unless expressly subject to the condition that the institution shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement.
 3. No agreement of any nature shall be entered into which:
 1. Provides that the institution shall purchase liability insurance or performance bonds.
(However, 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.)
 2. Provides that the institution or college of applied technology shall indemnify or hold harmless any other party.
 3. Provides that the institution shall pay taxes from which the institution is exempt by law.
 4. Provides for the payment of interest or late charges (other than as permitted under the Tennessee Prompt Pay Act), liquidated damages or penalties of any nature by the institution.
 5. Contains any provision concerning consent to: default by the institution binding arbitration, commencement of any legal proceedings, or payment of attorneys' fees.
 6. Provides for a disclaimer of vendor's liability for incidental, exemplary, consequential damages or limitations on dollar amount of damages recoverable by state from vendor; or*

7. *Provides for a disclaimer by vendor of express or implied warranties of merchantability and fitness for a particular purpose, unless the agreement is expressly subject to the approval of the Chancellor or designee.

1. *Note: In appropriate circumstances, the type of language described in sub-sections 6. & 7. of this section may be included in an agreement, if and only if, additional language which has been pre-approved by the Office of the General Counsel is included to address the language; or in appropriate circumstances, the procedures of TBR Purchasing Policy No. 4:02:10:00 XXV. G. or H. may be applied.

4. All agreements and contracts affecting a Tennessee College of Applied Technology must be approved by the Vice Chancellor for the Tennessee Colleges of Applied Technology, who for purposes of this policy shall have the authority and responsibilities of the presidents of other institutions. The Vice Chancellor for the Tennessee Colleges of Applied Technology may delegate authority to directors in writing.

5. The president or designee of an institution is authorized to approve applications for grants from agencies or organizations, provided that where 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.

6. The president or designee is further authorized to accept the award of a grant, and enter into agreements confirming grants; further provided that the acceptance of grants and agreements confirming the award of grants shall be subject to sections I. B. and C., supra.

7. Any agreement between a TBR institution and any other institution, agency, organization or entity which involves programs relating to matters of TBR system-wide interest, or any agreement which provides for the coordinated or cooperative offering of any credit or non-credit programs or activities or in which certificate or degree requirements are met or credit is given for coursework or activities offered by another institution, shall be expressly subject to the approval of the Chancellor or designee.

1. Examples of such agreements include provisions for either credit or non-credit academic programs or public service activities to private or state agencies and institutions in the fulfillment of that agency' s responsibility for state-wide services or governmental training, and
 2. Agreements which require consortia or cooperative arrangements with other institutions, agencies, or associations.
 3. This section does not apply to agreements concerning informal, locally arranged activities generally considered to be in the purview of the institution in the fulfillment or its role in community services or in providing student learning experiences as are seen in arrangements to provide student teaching experiences in the local public school systems.
8. In any agreement which requires participation by an applicant, student or employee of the institution in an education program or activity conducted in whole or in part by any other person or organization, or which facilitates, permits or considers participation by such persons as part of or equivalent to an education program or activity of the institution, the institution shall require the person or organization to agree that no person shall, on the basis of sex, age, race, color, religion, disability, veteran status or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under the education program or activity.
1. Breach of this provision shall be cause for termination of the agreement.
9. All agreements, contracts and subcontracts shall contain all necessary nondiscrimination requirements provided by federal or state laws and regulations.
10. All agreements not expressly requiring the approval of the Chancellor or designee may become effective upon the approval of the president or designee of an institution subject to the general requirements of this policy.
11. In the event there is any question as to whether an agreement or contract should be submitted for the approval of the Chancellor, the president should direct the inquiry to the Office of the General Counsel or the Director of Purchasing and Contracts.
12. The Office of the General Counsel and the Director of Contracts and Purchasing shall provide assistance to the institutions in drafting agreements and contracts, and shall recommend any

standard form agreements or contracts for use by institutions in the TBR which are deemed necessary or feasible.

13. Each institution shall develop written policies and procedures which are in addition to TBR's policies and guidelines and which will further ensure that no contract or agreement is entered into without the approval of the president or designee of the institution.
14. The Chancellor may direct that copies of any and all agreements entered into by institutions be submitted for informational and record keeping purposes, or to ensure compliance with this policy, and may direct that certain or all agreements of any institution be submitted for prior review and approval when deemed necessary to ensure such compliance. In addition, the Chancellor may require reports on the type and number of agreements entered into by institutions, with such additional information as may be necessary.
15. Each institution shall comply with the guidelines established pursuant to this policy.
16. The Chancellor or designee may approve exceptions to the requirements of this policy in appropriate cases.

Sources

TBR Meetings, March 5, 1976; June 26, 1981; September 30, 1983; December 13, 1985; September 22, 1989; June 28, 1991; December 5, 1997; December 2, 2005.



ATTACHMENT 7

(Student Residence Regulations)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Student Residence Regulations and Agreements: 3-03-01-00

Policy/Guideline Area

Student Policies

Applicable Divisions

Universities

Purpose

The following policy of the Tennessee Board of Regents is hereby adopted to establish certain minimum regulations and provisions which shall be applicable to all universities governed by the Board, and the provisions herein shall be incorporated by reference into all student residence agreements and leases entered into between students and universities. Each university is authorized to establish additional terms and provisions as part of any student residence agreement or lease, provided that all form agreements and leases shall be subject to the approval of the Chancellor of the Tennessee Board of Regents or his or her designee.

Policy/Guideline

1. General Provisions Applicable to All Student Residence Agreements and Leases

1. All student residence facilities, including dormitories and apartments, shall be limited to occupancy by full-time students and housing staff of the institution, provided that apartments may be occupied by spouses and children of full-time students if so designated by the institution; and provided further that part-time students may be approved for occupancy of student residence facilities in the discretion of the institution. In addition, residence facilities may be occupied by staff of the institution and may be leased to other persons in connection with programs and activities on campus when such facilities are not occupied or needed by students. All students, with the exception of students who are prohibited by federal or state law from residing in student residence facilities for any reason, shall have an equal opportunity to reside in student residence facilities

regardless of race, sex, marital status, creed, color, national origin, or handicap, provided that separate housing may be provided on the basis of sex or marital status.

2. No student who is registered as a sex offender pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 and whose victim was a minor shall be eligible to reside in any on-campus student residence facilities, including dormitories and apartments if:
 1. The campus includes a public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public. or;
 2. The campus is within one thousand feet (1000') of a public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.
3. All students who occupy any student residence unit shall maintain the unit in the same condition and repair as accepted at the commencement of the period of occupancy, and upon termination of such occupancy, shall surrender the premises in the same condition and repair, ordinary wear and tear excepted. No student may make any alternations, additions, or improvements to a residence unit without the written consent of the institution.
4. No student shall assign the lease of any residence unit, or sublet the unit, and any attempted assignment or sublease shall be void without the written consent of the institution.
5. Each student who occupies any residence unit agrees to pay the institution, immediately upon demand, for any and all damages to the unit, including but not limited to damages to exterior or interior walls, ceilings, floors, windows, doors, locks, hardware, plumbing fixtures, cabinets, shrubbery, lawn, appliances, fixtures, and furnishings of the unit and its surrounding premises, if such damage is caused by any act or failure to act by the student, or guests or invitees of the student.

6. The institution does not maintain insurance on any personal property of students, and all personal property of students on the premises shall be at the risk of the students. The institution shall not be liable for any damages to or theft of personal property of students in residence units.
7. The institution shall not be liable for any damages or injuries to any student or the occupants of student residence facilities, or to guests or invitees of such occupants, resulting from any act or failure to act by the student or any other occupant of the premises, or from any lack of repair of the facility or any accident occurring in or about the facility, except as authorized by and allowed pursuant to T.C.A. § 9-8-307. Each student who occupies any residence unit agrees to indemnify and hold the institution harmless from and against any and all claims, damages, or causes of action whatsoever, asserted by any person arising out of or in any way connected with the use of the premises by the student.
8. All student residence facilities shall be used for private residential purposes only. No student shall permit any objectionable noise or odor to escape from the residence unit, permit or create a nuisance, or disturb any other resident of the unit or the facility.
9. Officials and agents of the institution may enter the residence unit at all reasonable times to examine and inspect the unit, or to render service or repairs, and may remove any signs, fixtures, alterations or other objects not in conformity with this policy, the rules of the institution, or applicable law. Any residence unit may be searched with the consent of the student or any other occupant of the unit, or without such consent upon a finding of probable cause and the issuance of an authorization to search by the appropriate official of the institution or of any court with jurisdiction. Consent by any other occupant of the unit who is not a member of the family of the student under suspicion shall not extend to any personal belongings of, or areas restricted for exclusive use by, the student under suspicion.
10. Any student residence agreement or lease shall terminate at the discretion of the institution in the event of any of the following:
 1. The premises or the unit are destroyed or, in the opinion of the institution, unsuitable for occupancy for any reason;

2. The occupant thereof ceases to remain a student in good standing during any regular academic term within the period of the agreement or lease;
 3. The occupant thereof ceases to remain eligible to reside in student residence facilities pursuant to federal or state law;
 4. The student or other occupant violates any covenant, term or condition of the agreement or lease, including the provisions of this policy and any other rule or regulation incorporated into the agreement or lease by reference; or
 5. The institution gives the student or other occupant written notice of termination at least thirty (30) days prior to the date when such termination will be effective.
11. Refunds of rent paid in advance will be prorated on a weekly calendar basis when the student is forced to withdraw from the premises:
1. Because of personal medical reasons confirmed in writing by a licensed physician; or
 2. At the request of the institution pursuant to sections J.1. and J.5. of this policy. A full refund will be made in the event of the death of the student.
12. No pets or animals of any nature shall be permitted in any residence unit or in any residence facility; provided that if authorized in writing by the institutions, fish in aquariums of a designated size may be allowed.
13. All students who occupy any residence unit shall be subject to the rules, regulations, policies and procedures of the Board and the institution related to conduct and student housing, including visitation regulations, and the provisions of this policy, and institution's student handbook and residence handbook, shall be incorporated by reference into each student residence agreement or lease.
14. All student residence agreements and leases shall be limited to maximum term of one year, but may be renewable for additional terms at the election of the institution.

15. The rental or fee payable for any student residence unit shall be as established by the institution at the beginning of any academic term, and shall be subject to increase during the term of any agreement by the institution at any time upon twenty (20) days' notice before the beginning of the next quarter or semester in the event such an increase is approved by the Tennessee Board of Regents.

16. In the event any student or other occupant of a residence unit fails to comply with any terms or conditions of the residence agreement or lease, including the timely payment of rent, or with any rule, regulation or policy incorporated therein by reference, the institution may declare the lease or agreement terminated, and may enter and take possession of the premises after it has given notice to the student or other occupant to vacate the premises within twenty-four (24) hours.

17. Any student or other occupant of a residence unit who fails to comply with any terms or conditions of the residence agreement or lease, or with any rule, regulation or policy incorporated therein by reference, or who fails to make timely payment of all rental due or for damages caused to the premises, shall be liable to the institution for all expenses, including collection costs and reasonable attorney's fees, incurred by the institution in the enforcement or collection of the obligation involved.

18. Each institution is hereby authorized to require a security deposit and/or an application fee for students who apply for residence hall facilities, which deposit or fee may be forfeited by the student in the event he or she fails to enter into a residence agreement or lease, or fails to comply with any other covenant, term or condition of the agreement or lease or incorporated by reference herein.

2. Provisions Applicable to Student Dormitories and Residence Halls

1. The term of any student residence agreement or lease for a dormitory or residence hall unit may be for any or all of the regular quarters or semesters within the academic year of the institution, but shall not include any period between quarters or semesters, any holiday or vacation periods, or summer periods unless otherwise designated by the institution.

2. Rental for student dormitory or residence hall units shall be payable in its entirety in advance of the beginning of the term involved and payment thereof shall be a condition precedent to the student being an enrolled student for the term.
3. Notwithstanding the foregoing provision, each institution shall offer an optional payment plan under which a prorated amount of the rental for student dormitory or residence hall units shall be payable monthly in advance during the term. The monthly payment plan shall include the following provisions:
 1. Requirement that all federal or state financial aid granted to a student electing the monthly payment plan first be applied to the dormitory or residence hall rental for the full term and to maintenance fees or tuition, board and other assessed fees before any amount is distributed to the student;
 2. Assessment of a monthly service charge and a late payment charge established from time to time by the Board of Regents;
 3. Requirement that any deposit or application fee paid by a student electing the monthly payment plan be retained until the end of the term and applied against any balance due if necessary;
 4. Denial of readmission to any student who has not paid in full any rental and interest thereon, service charges, and late payment charges.
4. Residence hall students can participate in either the deferred payment plan (Guideline B-070) or the optional monthly housing payment plan. They cannot participate in both plans.
5. Students in dormitory or residence hall units may be assessed on a pro-rata basis for damages in corridors, bathrooms, lounges, and other common areas within or around a facility, either by floor or area or by the entire facility, following a hearing before the designated officials or body of the institution.
6. In the event any occupant of a multiple occupancy dormitory or residence hall unit ceases to reside in the unit for any reason, the institution shall have the right to reassign the remaining occupants to other student residence facility units on campus.

3. Provisions Applicable to Student Apartments

1. The term of any student residence agreement or lease for an apartment unit may be for any portion or all of a calendar year, subject to such renewal as may be provided by the institution.
2. Rental for student apartment units shall be payable monthly in advance, provided that the institution may require advance payment of rental for a period in excess of one month. The first periodic payment shall be payable in advance of the beginning of the quarter or semester involved, and payment thereof shall be a condition precedent to the student being an enrolled student for that quarter or semester. Any monthly or periodic payment which is not paid on or before the tenth day after such payment is due shall be subject to a late payment charge established from time to time by the Tennessee Board of Regents.
3. In the event any student apartment unit is occupied by two or more students, the unit shall be subject to the same conditions as student dormitory and residence hall units at the institution.
4. In the event the lease or other agreement for an apartment unit is terminated by the institution pursuant to section J.4. of this policy, or the student or other occupant vacates the premises prior to the end of the term of the lease or agreement, the student or other occupant shall be liable for any unpaid rent and any remaining rent until the end of the term of the lease or agreement or until the unit is subsequently leased or rented to another student, whichever is first to occur.

4. Exceptions

1. Exceptions to the provisions of this policy may be made pursuant to the written terms of a student residence agreement, subject to the approval of the Chancellor of the Tennessee Board of Regents or his or her designee.

Sources

TBR Meetings, September 29, 1978; December 7, 1979; March 18, 1983; September 30, 1983; June 21, 1996; March 27, 2008.



ATTACHMENT 8

(Students Scholarships, Grants, Loans and Financial Aid)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Student Scholarships, Grants, Loans & Financial Aid Programs at Tennessee Colleges of Applied Technology: 3:04:01:01

Policy/Guideline Area

Student Policies

Applicable Divisions

TCATs

Purpose

This policy covers the establishment of and participation in student scholarship and financial aid programs by Tennessee Colleges of Applied Technology.

Policy/Guideline

- Federal, State and Private Financial Aid, Loan, and Scholarship Programs
 - All schools 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. Schools must meet the eligibility requirements for participation and comply with all federal and state laws and regulations related to said programs.
 - In participating in educational assistance programs, schools shall comply with anti-discrimination laws. Schools may participate in 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. Schools may participate in any educational assistance program provided by the federal government or the State of Tennessee for affirmative action or desegregation purposes.
- Schools Scholarships and Grant Programs
 - General Parameters
 - State appropriations shall be expended or applied only to desegregation grants.
 - Each school is authorized to employ students under local work programs.

- Schools may award scholarships and grants, in any of the programs listed below in Section II. C., to students who are full-time, part-time, out-of-state, or Tennessee residents.
- The maximum amount of an individual academic scholarship or grant awarded for any one term shall be the amount of the maintenance fees for the term 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 school's financial aid office. 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 purpose of this policy, maintenance fees shall be defined as all mandatory fees payable by a student for continued enrollment at the school. 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 TCAT-080. The provisions of this section do not apply to privately funded scholarships or grants.
- Each school shall establish specific criteria and guidelines for administration of the scholarships and grant programs listed below in Section IIC. Such criteria must meet the minimum limitations set forth in this policy. The written procedures implementing this policy and all requirements for eligibility, maintenance, and renewal shall be approved by the Vice Chancellor for Colleges of Applied Technology prior to implementation and shall be published in the school's student handbook.
- Funding Sources for Scholarships and Grant Programs
 - Academic Scholarships and School Grants may be funded by a maximum of 10% of the maintenance fees received by the school in any one year. An exception to this limitation

may be made upon approval by the Chancellor and subsequent approval of the budget by TBR.

- Desegregation Grants shall be funded by state funds and may be supplemented by other campus revenue sources.

- Scholarships and Grant Programs

- Academic Scholarships

- Academic scholarship awards shall be limited to students who graduated from high school with a minimum high school average of B or the equivalent. Awards to HSE students shall be based upon evidence of comparable scholastic ability. Schools may make exception to the requirements of this paragraph when admitting students who have not attended high school for at least two years.

- Awards of academic scholarships shall be made on a school term basis and may be continuous for the length of the training program, provided the student maintains a minimum B grade average and minimum school attendance requirements.

- School Grants

- School grants may be provided for meeting affirmative and minority recruitment goals.

- School grants may be provided for assisting handicapped, physically disadvantaged, and economically disadvantaged students.

Sources

Approved December 11, 1992 Tennessee Board of Regents' Meeting; Revised: TBR Meeting, September 30, 2005. Revised Jan. 1, 2014 per Tennessee Alternative Diploma Act to reflect change from General Educational Development (GED) Certificate to Tennessee High School Equivalency (HSE) Diploma.



ATTACHMENT 9

(Student Financial Aid Programs at Tennessee Technology Centers)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Student Scholarships, Grants, Loans & Financial Aid Programs at Tennessee Colleges of Applied Technology : 3-04-01-01

Policy/Guideline Area

Student Policies

Applicable Divisions

TCATs

Purpose

This policy covers the establishment of and participation in student scholarship and financial aid programs by Tennessee Colleges of Applied Technology.

Policy/Guideline

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

1. All schools 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. Schools must meet the eligibility requirements for participation and comply with all federal and state laws and regulations related to said programs.
2. In participating in educational assistance programs, schools shall comply with anti-discrimination laws. Schools may participate in 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. Schools may participate in any educational assistance program provided by the federal government or the State of Tennessee for affirmative action or desegregation purposes.

2. Schools Scholarships and Grant Programs

1. General Parameters

1. State appropriations shall be expended or applied only to desegregation grants.
2. Each school is authorized to employ students under local work programs.
3. Schools may award scholarships and grants, in any of the programs listed below in Section II. C., to students who are full-time, part-time, out-of-state, or Tennessee residents.
4. The maximum amount of an individual academic scholarship or grant awarded for any one term shall be the amount of the maintenance fees for the term 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 school's financial aid office. 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 purpose of this policy, maintenance fees shall be defined as all mandatory fees payable by a student for continued enrollment at the school. 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 TCAT-080. The provisions of this section do not apply to privately funded scholarships or grants.
5. Each school shall establish specific criteria and guidelines for administration of the scholarships and grant programs listed below in Section IIC. Such criteria must meet the minimum limitations set forth in this policy. The written procedures implementing this policy and all requirements for eligibility, maintenance, and renewal shall be approved by the Vice Chancellor for Colleges of Applied Technology prior to implementation and shall be published in the school's student handbook.

2. Funding Sources for Scholarships and Grant Programs

1. Academic Scholarships and School Grants may be funded by a maximum of 10% of the maintenance fees received by the school in any one year. An exception to this limitation

may be made upon approval by the Chancellor and subsequent approval of the budget by TBR.

2. Desegregation Grants shall be funded by state funds and may be supplemented by other campus revenue sources.

3. C. Scholarships and Grant Programs

1. Academic Scholarships

1. Academic scholarship awards shall be limited to students who graduated from high school with a minimum high school average of B or the equivalent. Awards to GED students shall be based upon evidence of comparable scholastic ability. Schools may make exception to the requirements of this paragraph when admitting students who have not attended high school for at least two years.

2. Awards of academic scholarships shall be made on a school term basis and may be continuous for the length of the training program, provided the student maintains a minimum B grade average and minimum school attendance requirements.

2. School Grants

1. School grants may be provided for meeting affirmative and minority recruitment goals.

2. School grants may be provided for assisting handicapped, physically disadvantaged, and economically disadvantaged students.

Sources

Approved December 11, 1992 Tennessee Board of Regents' Meeting; Revised: TBR Meeting, September 30, 2005.



ATTACHMENT 10

(Purchasing Policies & Procedures)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Purchasing Policies and Procedures: 4:02:10:00

Policy/Guideline Area

Business and Finance Policies

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The following policy and procedures, Minimum General Bid Conditions (Exhibit 2), and Code of Ethics in Procurement and Contracting (Exhibit 3) are adopted as minimum standards for exercise by the TBR System Office, Presidents and Directors of the institutions governed by the Tennessee Board of Regents, of their delegated authority to purchase materials, supplies, equipment and services.

Definitions

- Competitive Bidding - it will be considered open and competitive bidding by utilizing one of the following procurement techniques:
 - Requests for Quotation (RFQ)/Invitation to Bid (ITB) – a competitive process soliciting bids from possible suppliers for a one-time procurement of product(s) and/or service(s).
 - Requests for Proposals (RFP) – a competitive process in which bids are solicited from possible suppliers, with a source or sources of supply established for a specified period of time at agreed upon unit pricing for goods and/or services.
 - Responsive - the bid meets the requirements and criteria set forth in the Request for Quotation or Request for Proposal.
 - Responsible - the bidder is capable of performing or is not otherwise disqualified.
 - Multi-step sealed bidding - a two-phase process consisting of a technical first phase composed of one or more steps in which proposers submit un-priced technical offers to be evaluated and a second phase in which those proposers whose technical offers are determined to be responsive during the first phase have their price proposals considered.

- Procurement Under the Authority of Another Entity's Bid Process - purchase of materials or services, for which any TBR or UT institution or the State of Tennessee Department of General Services, Purchasing Division, has awarded a contract to a vendor through the competitive bidding process.
- State Manufactured Articles and Services - items (goods) and services purchased from other State agencies.
- Procurement under Contracts with Group Purchasing Organizations - goods and services under a contract with a group purchasing program as provided in T.C.A. § 49-7-127.
- Gifts - shall be defined as a voluntary transfer of goods or services to the institution made gratuitously and without consideration.
- Service Contract – a contract for personal, professional, or consulting service.
- State contract - a TBR institution contract, a TBR system contract, a UT contract, or a General Services contract.
- Minority owned Business – a business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.
- "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:
 - African American (a person having origins in any of the black racial groups of Africa;
 - Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - Native American (a person having origins in any of the original peoples of North America.
- Small Business – a business that is independently owned and operated, for profit, is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation.
- Woman owned Business - a woman owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%)

owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

- Tennessee Business - Tennessee business means a business (T.C.A. § 12-4-121(c)(2):
 - Incorporated in this state;
 - That has its principal place of business in this state; or
 - That has an established physical presence in this state.
- Other definitions are part of the body of the policy text.

Policy/Guideline

I. Purchasing Authority

- A. Except as specifically provided in this policy or other TBR policies or guidelines, the authority of the Presidents and Directors pursuant to these policies and procedures shall not include the purchase or lease of real property, purchase of data processing equipment over \$249,999.99, the purchase of insurance, or purchases for capital outlay projects from any fund source whatsoever.
- B. Goods and services may be procured without competitive bidding only if such purchases are justified in writing and approved by the Chancellor, President, or Director as required by TBR policies and guidelines.
- C. In cases where the TBR policies and procedures do not address a specific procedure for purchase of a particular item, the Department of General Services' rules and regulations will govern, if applicable.
- D. The Chancellor, President, Director, Chief Business Officer, or Chief Procurement Officer may delegate approval authority as specified in this policy to designees.
- E. Time periods specified in this policy shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.

II. Competitive Bidding and Specifications

- A. All purchases shall be based upon the principle of competitive bidding except as herein provided.
- B. Required documentation related to competitive bidding shall be routed through the institution's procurement/contract office, prior to the purchase, to ensure compliance with applicable policies and guidelines.
- C. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guideline B-095, and T.C.A. §12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically.
- D. Whenever possible, all specifications for materials, supplies, equipment and services shall be worded or designed so as to permit open and competitive bidding for the supplying of the article, commodities or services to which they apply.
- E. For all RFPs and RFQs exceeding \$100,000, written certification from the author or committee that the specifications, to the best of their knowledge, are not proprietary shall be documented in the bid file.
- F. It is the responsibility of the procurement officer to ensure all competitive bidding is considered fair and open in a bid process. It will be considered open and competitive bidding by utilizing one of the following procurement techniques:
 - 1. Requests for Quotation (RFQ)/Invitation to Bid (ITB)
 - a. Specifications based on brand names and product numbers - reference to brand names, trade names, model numbers or other descriptions peculiar to specific brand products is made to establish a required level of quality and functional capabilities.
 - b. It is not intended to exclude other products of that level. Comparable products of other manufacturers will be considered if proof of comparability is contained in the bid.
 - c. Vendors are required to notify the Chief Procurement Officer whenever specifications procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the Chief Procurement Officer at least three (3) working days prior to the bid opening.

- d. It shall be the responsibility of the vendors, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered.
- e. Failure to provide this data may be considered valid justification for rejection of a bid;
 - (1) Specifications based on standard specifications;
 - (2) Specifications based on qualified products list; or
 - (3) Specifications based on catalogs, price lists, or price schedules.
- f. 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 the Board of Standards, January 30, 2007)

III. Requests for Proposals (RFP) under \$50,000

- A. Does not require sealed bids; can be written, telephone or electronic.
- B. If the estimated amount of the purchase (or revenue) is at least \$10,000 but less than \$50,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors (with the exception below)
- C. When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.
 - 1. Exception: Institutions are permitted to make purchases of goods and services under a contract with a group purchasing program as provided in T.C.A. § 49-7-127. The statute specifically permits such purchases when the price for goods or services under a group purchasing program is lower than the price available on a state contract.
 - 2. Comparison pricing must have been obtained within twelve (12) months of the date of comparison.

IV. Request for Proposal (RFP) – \$50,000 and over

- A. Sealed bid with separate sealed technical and cost proposals which must be submitted at the same time.
- B. Compliance with the mandatory RFP requirements shall be determined by the RFP Coordinator in consultation with the Chief Business Officer or designee.

- C. Evaluation of technical offers shall be determined by an evaluation team selected by the president or designee. Members of the evaluation team should be adequate and appropriate to the scope and nature of the RFP.
- D. Procurement department representatives shall review the proposals to ensure procurement procedures were followed and shall offer guidance to the evaluation team, but shall not serve on the evaluation team, and shall not score technical proposals received, except in instances where the RFP is directly related to a good/service needed by the procurement department.
- E. Any technical offers shall be evaluated based on the criteria of the RFP and other information learned during the technical evaluation process.
- F. Any technical offer submitted which contains any pricing information of any type shall be rejected.
- G. Technical offers not deemed acceptable will not proceed to the pricing phase. Cost proposals shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the institution.
- H. Technical and cost proposals shall not be made public until the inspection period following the evaluation of the cost proposals.
- I. If the estimated amount of the purchase (or revenue) is \$50,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Vendors List-- whichever is less and to all that request the specific RFQ/RFP. (The Chief Procurement Officer must approve the solicitation of less than 15 bids).
- J. A contract for consulting services hereunder which exceeds \$25,000 shall not be allowed unless it is determined by the Chancellor, President, or Director, in writing, that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency.
 - 1. A cover form will be required to be completed by the requisitioning department, submitted to the institution's procurement office, certifying the need for the service(s) and that appropriate consideration has been given to the use of state resources (sample language is available through the TBR System Office).

V. Additional Procedures for Multi-step Sealed Bidding

- A. The use of a multi-step sealed bidding process is required in the bidding process for the procurement of products and/or services when it is not practical to prepare initially definitive specifications.
- B. For any contract that results from an RFP, 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 the Board of Standards, January 30, 2007)

VI. Procurement Under the Authority of Another Entity's Bid Process

- A. Purchase of materials or services may be made without adherence to (12) Minimum Notice and Number of Bids, provided the vendor meets the bid specifications.
- B. Note: the competitive bidding process of another entity (except the State Purchasing Division) must have specified that other institutions would be permitted to purchase under the bid.
- C. Institutions are strongly encouraged to include language in RFPs/RFQs asking if the bid is open to other TBR and UT institutions.
- D. This Section does not preclude institutions from utilizing an SWC as a bid in accordance with the competitive bidding process outlined in (12) Minimum Notice and Number of Bids, if so desired. (F&A Rule 0690-3-1-.01 (5) and Section XXVII of this policy.)

VII. Procurement of State Manufactured Articles and Services

- A. All institutions are required to purchase items (goods) and services from other State agencies, e.g., Department of Correction, Blind Services, Tennessee Rehabilitative Initiative in Correction (TRICOR), Community Rehabilitation Agencies (CMRA) / TRUST in Tennessee, whenever such items or services are available therefrom and meet the desired conditions and standards. (General Services Rule 0690-3-1-.01 (7) (d).)
- B. In addition, for personal, professional and consultant service contracts only, no competitive process is required when the contractor is a state agency (as provided in the immediately preceding paragraph), a political subdivision of the state, any other public entity in Tennessee, or an entity of the federal government. The non-competitive negotiation process in Section XXV subsection C. of this Policy may be used for such contracts. (F&A Rule 0620-3-3-.03).

VIII. Procurement under Contracts with Group Purchasing Organizations

- A. Institutions are permitted to make purchases of goods and services under a contract with a group purchasing program as provided in T.C.A. § 49-7-127.
- B. The statute specifically permits such purchases when the price for goods or services under a group purchasing program is lower than the price available on a state contract.
- C. Comparison pricing must have been obtained within twelve (12) months of the date of comparison.
- D. See Section XXXII for Reporting and Documentation Requirements.

IX. Gifts

- A. Gifts do not require a procurement process subject to this policy. See TBR Policy 4:01:04:00 Solicitation and Acceptance of Gifts and TBR G-030, Section 3.
- B. Essential elements of a gift are:
 - 1. Capacity of the donor of the gift,
 - 2. Intention of donor to make a gift,
 - 3. Completed delivery of the gift to or for the institution, and
 - 4. Acceptance of the gift by the institution.
- C. Nothing in this policy shall be construed to mean that the institution must accept any gift.

X. Procurement of Goods, Materials, and Supplies/Services

- A. Goods, materials, and supplies (cumulatively called "goods") should be awarded to the lowest responsive and responsible bidder pursuant to a Request for Quotation, sometimes called an Invitation to Bid. (A sample Request for Quotation is available at the TBR web site.)
- B. Goods and Services. Certain services or a combination of goods and services may be procured as a "good", based on a Request for Quotation rather than a Request for Proposal, if the end product is more important than the service that goes toward its production or when the vendor has little discretion in determining its actual content or form.
 - 1. Examples of this type of service may include, but are not limited to:
 - a. pest control;
 - b. security services;
 - c. moving and hauling;
 - d. refuse collections;
 - e. charter services;

- f. printing services, and
 - g. maintenance services.
- C. Mischaracterization of an item to be procured as a good or service shall not constitute an error in the procurement if the requirements of this policy are met, but it may be grounds for the institution to terminate the procurement process.
- D. For competitive procurement of goods, an Invitation to Bid (or Request for Quotation) is appropriate, and in general, a purchase order may be used to finalize the purchase.
- E. For competitive procurement of services, a Request for Proposal is more appropriate, and a purchase order is generally not sufficient to serve as the written contract for the services.
- F. For procurement of services which will require System Office approval, the Request for Proposal format approved by the System Office shall be used.
- G. Procurement of goods under this policy shall not require a monitoring plan, but shall comply with TBR and institution internal controls and audit procedures.
- H. Services
 - 1. A contract for personal, professional, 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.
 - 2. 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.
 - 3. Detailed information regarding service contracts is provided in TBR Guideline G-030.
 - 4. A sample Request for Proposal for service contracts is available at the TBR web site.
 - 5. Each institution's RFP should contain, at a minimum, the requirements of the sample RFP provided by TBR System Office.
 - 6. A contract for consulting services hereunder which exceeds \$25,000 shall not be allowed unless it is determined by the Chancellor, President, or Director, in writing that the services are in fact needed and that they cannot be satisfactorily or economically performed by a state agency.
 - 7. A cover form will be required to be completed by the requisitioning department, submitted to the institution's procurement office, certifying the need for the service(s)

and that appropriate consideration has been given to the use of state resources (sample language is available through the TBR System Office).

8. Monitoring of Services

a. Institutions shall have a monitoring plan for all service contracts, including grants and grant subcontracts, to ensure the following:

- (1) That deliverables are received,
- (2) Financial obligation of the institution does not exceed the contract pricing, and
- (3) Services are in compliance with the terms and conditions of the contract.

XI. Outsourcing

A. Institutions are encouraged to determine whether some services can be delivered more economically by the private rather than the public sector. The following process is hereby permitted and encouraged:

1. The state's cost of the service may be ascertained and kept confidential as part of the evaluation process. This cost must be finally determined and provided to the Chancellor, President, or Director, as appropriate, in a sealed envelope prior to bid/proposal due date.
2. The service may be the subject of an RFQ/RFP, as appropriate, which approximately describes the services heretofore provided by the TBR/institution.
3. The RFP/RFQ may require that if the proposer's/bidder's price exceeds the state's confidential cost, the proposal/bid may be rejected.

XII. Illegal Immigrants

A. No person may enter into a contract to supply goods or services to the state or other state entities without first attesting in writing that the person will not knowingly utilize the services of illegal immigrants in the performance of the contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract.

B. The procedures for implementing this Policy and the attestation form are provided in TBR Guideline G-030. Language to be included in bids/proposals is included in Exhibit 2, Minimum General Bid Conditions

XIII. Requests for Quotation & Requests for Proposal

A. Requests for Quotation and Requests for Proposal shall specify:

1. The time and place that bids will be received and opened;
 2. Information describing the purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired;
 3. The amount or number of articles or services required;
 4. For all RFPs and RFQs exceeding \$100,000, in estimated expenditure or revenue, a question/answer period and/or pre-bidders' conference, with all questions and responses forwarded to all prospective bidders (The larger or more complex an RFP is, the more likely a pre-bidders' conference should be held, and the more likely it may be that two periods of questions and answers may be appropriate.);
 5. The time of delivery;
 6. The amount, if any, of any bid bond or certified checks to accompany the bid/proposal;
 7. The amount, if any, of any performance bond which may be required if the vendor is the successful bidder;
 8. A declaration of the contract terms and conditions which shall be required by the institution;
 9. A description of the factors to be considered in evaluating bids/proposals, if applicable;
 10. Date bid/proposals evaluations will be available for viewing;
 11. If applicable, whether other TBR institutions and/or UT institutions may purchase from the contract; and
 12. The period of time during which each bidder/proposer will hold its bid open and the period during which the contract awarded will be available to other institutions, if applicable.
- B. RFQs/RFPs may specify any other requirements, conditions, or information in reference to the purchase deemed necessary.
- C. RFQ/RFP files (hard-copy or electronic) shall contain, at a minimum, the following:
1. A copy of the RFQ/RFP issued (including specifications),
 2. A list of vendors for solicitation,
 3. The date vendors were sent the RFQ/RFP,

4. For RFPs and applicable RFQs, any pre-bid questions/responses or addendums to the RFQ/RFP,
5. For RFPs and applicable RFQs, all documentation relating to the composition of the evaluation team and the evaluation documentation used to make the award,
6. As applicable, any documentation that warrants a re-bid of the RFQ/RFP,
7. Any informal bid complaints and the respective responses/actions,
8. As applicable, copies of intent to award letters, and
9. The executed purchase order and/or contract.

XIV. Minimum Notice and Number of Bids

- A. The number of bids required and the notice to bidders for solicitation of bids for purchases and revenue contracts shall be as follows:
 1. As noted in paragraph IV. above, if the estimated amount of the purchase (or revenue) is \$50,000 or more, written sealed bids must be solicited from fifteen (15) vendors or the number of vendors on the Vendors List--whichever is less and to all that request the specific RFQ/RFP. (The Chief Procurement Officer must approve the solicitation of less than 15 bids).
 2. If the annual estimated amount of the purchase is \$100,000 or more, solicitations must be sent in a manner that verifies proof of delivery.
 3. An RFQ for goods must be sent at least fourteen (14) days (ten (10) days when all vendors are local vendors) before the date that the bids are scheduled to be opened.
 4. For RFPs and applicable RFQs, (for example, those RFQs having requirements in addition to or other than the purchase of goods), a minimum of four (4) to six (6) weeks should be allowed for vendors to adequately prepare a competitive proposal based on the method of RFP or RFQ delivery, bid specifications and pre-bidders questions/responses.
 5. Examples of types of bids which would need to allow at least six (6) weeks include, but are not limited to:
 - a. Banking and other financial services,
 - b. Bookstore and food services,
 - c. Custom software and or IT system services,
 - d. Advertising management services,

- e. And any other bid for which the additional time is appropriate.
- B. A vendor's general or standing request for notice for all RFQs/RFPs or all RFQs/RFPs of a given type shall not suffice as a request for a specific RFQ/RFP and shall create no obligation on the institution.
- C. As noted in paragraph III. above, if the estimated amount of the purchase (or revenue) is at least \$10,000 but less than \$50,000, written, telephone or electronic bids must be solicited from at least three (3) qualified vendors (with the exception of (3)(c)1. above).
- D. When telephone bids are solicited, a written record of the bidders and amounts bid shall be maintained.

XV. Bid Withdrawal, Bid revision, and Bid Rejection

- A. Before bid opening, a vendor may be permitted to withdraw a bid entirely and/or submit a substitute bid. The vendor making such a request must submit suitable identification.
- B. After bid opening, a vendor will be permitted to withdraw a bid only where there is obvious clerical error in the bid such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received.
- C. Withdrawal will be considered only upon written request from the vendor.
- D. In cases of errors in the extension of prices in the bid, the unit price will govern.
- E. Incorrect proposal information – If the institution determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, the proposal may be rejected and the vendor may be removed from the vendor list.
- F. A bid may not be revised after bid opening, however;
 - 1. After evaluation is complete and the successful bidder/proposer selected, the institution may initiate negotiations which serve to alter the bid/proposal in a way favorable to the institution.
 - 2. For example, prices may be reduced, time requirements may be revised, the bid/proposal may be revised to supply omitted contract terms, etc.
 - 3. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful proposer no longer offers the best proposal.

- G. Any proposal that restricts the rights of the institution or otherwise qualifies or limits the proposal may be considered to be non-responsive, and the proposal may be rejected.
- H. When it becomes necessary to reject all bids, the reason for such rejection must be set out in complete detail and made available to all bidders who submitted a bid.
- I. Action to reject all bids shall be taken only for unreasonably high prices, errors in the RFQ/RFP, cessation of need, unavailability of funds, failure of all proposals to meet technical specifications, lack of competition, a determination that the goods/services can be more economically delivered pursuant to an agreement with another TBR institution or other state agency, or a determination that proceeding with the procurement would be detrimental to the best interests of the institution, the reason for which must be documented and approved by the Chancellor or designee, President or designee, Vice Chancellor for Colleges of Applied Technology or Director.
- J. If another RFP is to be issued, all prior offers and/or proposals shall remain closed to inspection by the proposers and/or the public until the evaluation of the re-bid is complete.

XVI. Acceptance of Bids/No Rights Created

- A. Notwithstanding any provision contained herein or in any solicitation document, submission of a bid or a proposal shall not create rights, interests or claims of entitlement in any bidder or proposer, including the successful bidder or proposer. Notwithstanding any action or agreement to the contrary, no such right, interest, or claim shall exist unless and until a purchase order has been issued or a contract is fully executed.
- B. For RFPs and applicable RFQs, a notice of intent to award shall be sent to all proposers containing, at a minimum, the content provided by the TBR System Office.
- C. All bids shall be subject to rejection by the Chancellor or designee, President or designee, Vice Chancellor for Colleges of Applied Technology or Director. If awarded, the contract for purchase shall be awarded to the lowest qualified and responsible bidder, taking into consideration quantifiable factors including but not limited to the apparent ability of the bidder to perform the proposed contract, the conformity of the articles or services to the specifications, any discount allowed for prompt payment or for any other reason, transportation charges, and the date of delivery specified in the RFP/RFQ.
- D. A bond for the faithful performance of any contract may be required at the discretion of the institution.

- E. A complete written record on all procedures and justifications shall be maintained on each procurement transaction in order to provide a clear audit trail on the purchase.
- F. Bids must be received in the specified location on or before the date and hour designated for bid opening. All bids received must be date and time stamped to show compliance with the designated opening date and time. Late bids will not be considered in contract award.
- G. All RFQs received shall be publicly opened and examined by a designated institutional representative at the time and place specified in the RFQ. Whenever sealed bidding is utilized, bidders shall have no less than five (5) working days after the opening before a purchase order/contract may be awarded.
- H. All RFQs/RFPs conforming to the RFQ/RFP specifications, together with the name of the bidders, shall be recorded. Only after the completion of evaluation shall the complete procurement files become a matter of public record and open to public inspection.
- I. Each bid should give the full name and business address of the bidder; if the vendor is a corporation, the name shall be stated as it is in the corporate charter.
- J. Each bid must be signed in ink by the vendor's authorized agent. Unsigned bids will be rejected. The person signing the bid must show his title, and if requested by the institution or college of applied technology, must furnish satisfactory proof of his or her authority to bind his or her company in contract.
- K. Bids must be typewritten or in ink; otherwise they may not be considered. However, institutions may conduct informal procurement electronically, and if the institution requests or permits electronic bidding, no bidder's signature shall be required. T.C.A. § 12-3-704. Unless original signatures are otherwise required (e.g., easements, deeds and other real property documents), electronic procurement is permitted for formal procurements when the required rules and procedures are developed in accordance with TBR Guidelines B-095 and T.C.A. § 12-3-704, which provides that state agencies shall not require small and minority owned businesses to receive or respond to invitations to bid/request for quotations or request for proposals, or other solicitations electronically.
- L. A purchase order, if applicable, will be issued to the firm name appearing on the bid.
- M. When more than one item is specified in the RFQ/RFP, the institution may provide in the RFQ/RFP that the institution shall have the right to determine the low vendor(s) either on the basis of each individual item, a group of items, or the total of all items.

- N. Alternate bids will not be considered unless specifically called for in the bid.
- O. All material, supplies, and equipment offered and furnished must be new unless the RFQ/RFP specifically permits offers of used, remanufactured, or reconditioned items. RFQs/RFPs which specifically permit offers of used, remanufactured, or reconditioned items shall require a warranty; however, the Chancellor, President, or Director shall have the authority to waive this requirement.

XVII. Protested Bids

A. Right to Protest

1. Any actual proposer who claims to be aggrieved in connection with a specific solicitation process may submit a protest in writing to the Chief Procurement Officer within seven (7) calendar days after he or she knows or should have known the facts giving rise to the protest.
2. All proposers should know and shall be deemed responsible for knowing the facts documented in the institution's procurement files on the day the institution opens the bid files for public inspection.
3. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.

B. Signature on Protest Constitutes Certificate.

1. The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation.
2. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected institution, the amount of the

reasonable expenses incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper, including reasonable attorneys' fees.

3. Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond (See Exhibit 1).
4. The protesting party shall post, with the Chief Procurement Officer of the institution, at the time of filing a notice of protest, a bond payable to the institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form and substance acceptable to the institution and shall be immediately payable to the institution conditioned upon a decision by the Chancellor that:
 - a. A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor, in violation of Section XVII subsection B.;
 - b. The protest has been brought or pursued in bad faith; or
 - c. The protest does not state on its face a valid basis for protest.
5. The institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the institution. If the protesting party appeals the determination in accordance with paragraph (17), the institution shall hold such protest bond until instructed by the Chancellor to either keep the bond or return it to the protesting party.
6. At the time of filing notice of a protest of a procurement in which the lowest evaluated cost proposal is less than one million dollars (\$1,000,000), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000), a minority or small business protesting party may submit a written petition to the Chief Procurement Officer for exemption from the protest bond requirement of Section XVII, B., 3.
7. Such a petition must include clear evidence of minority or small business status.
8. On the day of receipt, the petition shall be given (may be faxed) to the Chancellor or designee. The Chancellor has five (5) business days in which to make a determination.
9. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted.

10. Should the Chancellor deny an exemption from the requirement, the protesting party shall post the bond with the Chief Procurement Officer of the institution as required in paragraph Section XVII, B., 3. within three (3) business days of the determination.

C. Authority to Resolve Protest

1. The Chief Procurement Officer of the institution has the authority to resolve the protest. If deemed necessary, the Chief Procurement Officer may request a meeting with the protesting party to seek clarification of the protest issues.
2. The final determination of the Chief Procurement Officer shall be given in writing and submitted to the protesting party.
3. The protesting party may request that the final determination of the Chief Procurement Officer be considered by the Chief Business Officer of the institution. The request for consideration shall be made in writing to the Chief Business Officer within seven (7) calendar days from the date of the final determination by the Chief Procurement Officer.
4. The Chief Business Officer has the authority to review and resolve the protest. If deemed necessary, the Chief Business Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Chief Business Officer shall be given in writing and submitted to the protesting party.
5. The protesting party may request that the final determination of the Chief Business Officer be considered by the President or Director of the institution. The request for consideration shall be made in writing to the President or Director within seven (7) calendar days from the date of the final determination by the Chief Business Officer.
6. The institution shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.
7. The protesting party may request that the final determination of the President/Director be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President/Director.
8. The determination of the Chancellor or designee is final and shall be given in writing and submitted to the protestor.

9. In the event that the institution fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.

D. Stay of Award

1. Prior to the award of a contract, a proposer who has protested may submit to the Chief Business Officer a written petition for stay of award. Such stay shall become effective upon receipt by the Chief Business Officer.
2. The Chief Procurement Officer shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the Chancellor makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the institution.
3. It shall be the responsibility of the Chief Business Officer to seek such determination by the Chancellor.

E. Protest Subsequent to Award

1. The Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the state for the negligent deprivation of statutory rights.

F. Appeal to Chancery Court

1. Protests appealed to the chancery court from the Chancellor's decision shall be by common law writ of certiorari.
2. The scope of review in the proceedings shall be limited to the record made before the Chancellor and shall involve only an inquiry into whether the Chancellor exceeded his/her jurisdiction; followed an unlawful procedure; or acted illegally, fraudulently or arbitrarily without material evidence to support his/her action.

G. Appendix I (Exhibit 1)

1. A protest bond may be presented to the institution in form and substance compliant with the Protest Bond format attached in Exhibit 1. Any protest bond presented to the institution that represents a deviation from the Exhibit 1 format shall be considered for acceptability by the institution on a case by case basis.

XVIII. Tie Bids

- A. Goods - A tie bid exists when two or more bidders offer goods and/or services that meet all specifications, terms and conditions at identical prices, including cash discount offered. In such case, a tie bid will be broken by the following methods, in descending order of preference:
 - 1. Tennessee businesses will be given preference.
 - 2. Small, minority and women-owned business will be given preference.
 - 3. Award item(s) to vendor who was low bidder on other item(s) being bid per the same requisition.
 - 4. Best delivery.
 - 5. By lot or coin toss (properly witnessed and documented).
- B. Personal, professional and consultant services - In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the institution shall request best and final cost proposals from only those proposers with scores that tie. The institution may calculate new evaluation scores for the tying proposals by adding the original technical scores to the recalculated cost scores. Should another tie result, the contract shall be awarded by coin toss.

XIX. Receiving Reports

- A. When any supplies, equipment, or materials are received by an institution, the receiving agent thereof shall maintain a record of receipt that the supplies, equipment, or materials received were equal in quality and quantity to those requisitioned.
- B. Appropriate documentation of contract performance or specific deliverables shall be provided by the requisitioning department prior to payment for services, supplies, equipment, and materials.
- C. Complete records on all receiving reports/documentation shall be maintained in order to provide for a clear audit trail on the receipt of all purchases.

XX. Vendors List

- A. Each institution shall maintain a list of vendors which shows the types or classes of materials, supplies, equipment or services which the person, firm or corporation is willing and able to furnish to the institution.
- B. The institution may require the person, firm or corporation to submit sufficient information to demonstrate ability to perform any future commitment prior to inclusion on the list of bidders.

XXI. Removal from Vendors List

- A. Vendors who fail to respond to a reasonable number of bids or fail to provide adequate goods and/or services shall be removed from the vendors list.
- B. Reported failure to comply with bids, awards, and/or orders becomes a part of the bidder's application file.
- C. If a qualified bidder repeatedly fails to respond to Invitations to Bid, the bidder will be removed from all commodity groups. Examples of failure to comply include but are not limited to:
 - 1. Over shipments: Under shipments;
 - 2. Early Shipments: Late Shipments;
 - 3. Damaged Products: Defective Products;
 - 4. Shipments not in Conformance with Specifications;
 - 5. Unauthorized Substitutions;
 - 6. Billing Errors;
 - 7. Service Deficiencies;
 - 8. Failure to Ship
- D. Other principal causes for temporary or permanent removal from the bid list are:
 - 1. Unethical Practices
 - 2. Misrepresentation of Merchandise
- E. Failure of a vendor to perform satisfactorily in any of the above areas may result in a vendor's liability for damages to the institution.

XXII. Purchases from Small/Minority/Women Owned Businesses

- A. All institutions, in accordance with state and federal law, shall actively promote and encourage diversity participation with small, minority, and women-owned businesses in order to obtain a fair proportion of goods and services from such businesses as further defined in Exhibit 4 to this policy.
- B. Information regarding small, minority, and women-owned business solicitations and purchases will be filed with the Governor's Office of Diversity Business Enterprise and the Department of General Services which will consolidate this information into reports to the Legislature.

XXIII. Emergency Purchases

- A. Purchases of specific materials, supplies, equipment or services may be made in the open market for immediate delivery only to meet bona fide emergencies arising from any unforeseen cause.
- B. All bona fide emergency purchases must be approved by the Chancellor, President, or Director, and a written report on the circumstances of any such emergency justifying the purchase shall be prepared and maintained.
- C. All emergency purchases shall, if practicable, be made on the basis of competitive bids.

XXIV. Special Purchase Categories

A. Competitive Negotiation

1. A contract may be entered into by competitive negotiation only in cases when the institution is unable to obtain needed goods and/or services by the competitive bid process. In addition, competitive negotiation may be appropriate for personal, professional and consultant service contracts when one of the following is true:
 - a. Public need will not permit the delay incident to the RFP process;
 - b. No acceptable proposals have been received after the RFP process;
 - c. Rates payable for the services are regulated by law; or
 - d. As provided in Section XIV.C. of this Policy. (F&A Rule 0620-3-3-.03)
 2. The Chancellor, President, or Director shall prescribe the procedures under which negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process; procedures shall mandate communication of the requirements of the institution, clarify best interests of the institution, and solicit bids from at least three (3) potential providers (including minority, disadvantaged and small business providers as otherwise required by TBR policy and guidelines), and require documentation of the solicitation process.
 3. In the event it appears the competitive negotiation process is to be implemented, such an action must be approved by the Chancellor, President, or Director.
 4. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chancellor, President, or Director, and he or she shall approve the results prior to entering into a contract.
- B. Non-competitive negotiation for sole source procurement – the negotiation of the terms of a contract with only one provider.

1. Personal, professional and consultant service contracts may be obtained by non-competitive negotiation when the contractor is a state agency, a political subdivision of the state, and any other public entity in Tennessee, or an entity of the federal government. (See Section XVII. Subsections A. & B. of this policy and F&A Rule 0620-3-3-03.)
2. Sole source or proprietary purchases may be allowed pursuant to the following:
 - a. Sole Source Procurement - Sole source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source. The vendor must furnish a letter indicating that it is the sole source and the letter must be signed by an authorized company representative.
 - b. Proprietary Purchase - A proprietary product is one that is manufactured and marketed by a person or persons having the exclusive right to manufacture and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, bid invitations must be issued unless the estimated purchase is less than \$10,000.
3. Factors to be considered in sole source and proprietary purchases include the following:
 - a. Whether the vendor possesses exclusive and/or predominant capabilities or the items contain a patented feature providing superior utility not obtainable from similar products.
 - b. Whether the product or service is unique and easily established as one of a kind.
 - c. Whether the program requirements can be modified so that competitive products or services may be used.
 - d. Whether the product is available from only one source and not merchandised through wholesalers, jobbers, and retailers.
 - e. Whether items must be interchangeable or compatible with in-place items.
 - f. Whether the cost of conversion, including but not limited to disruption, re-training, and replacement precludes bidding competitively.
 - g. Whether the product is to be used in an instructional setting and the intent is to provide instruction on the specific product or diversity of products.

- h. For personal, professional and consultant services, whether the use of non-competitive negotiation is in the best interests of the institution. (F&A Rule 0620-3-3-.03)
 - i. Other justifications as approved by the Chancellor, President, Director.
- 4. Only authorized sole source may be procured utilizing non-competitive negotiation and a completed non-competitive justification form.
- 5. Whenever specifications are not so worded or designed to provide competitive bidding, or specify a single brand, the person responsible for the recommendation shall be required to justify the necessity for the specification in writing, and the request shall be approved by the Chancellor, President, or Director. The TBR Justification for Non-Competitive Purchases and Contracts Form must be completed and approved by the institution's procurement office or TBR System Office (when applicable).

C. Purchases for Resale in Auxiliary Enterprises

- 1. Purchases of items for resale shall be made as follows:
 - a. Textbooks and other course related materials may be purchased without adherence to Section IV of this policy, Minimum Notice and Number of Bids. All textbook ordering lists and authorization forms must be maintained for audit purposes.
 - b. Certain items for resale for which customers have expressed a preference, and/or promotional items procured under accepted retail merchandising practices, may be purchased without adherence to Section IV of this Policy, Minimum Notice and Number of Bids. Appropriate documentation shall be maintained which supports the action taken.

D. Purchases for Libraries, Excluding Materials and Supplies Identified for Consumption by the Library

- 1. Purchases of materials for additions to a library collection include cost of books, catalogs, periodicals, binding, audio-visual media, and other general publications. These items are capital expenditures.
- 2. Each institution shall be responsible for developing procurement policies and procedures for the library.

3. These purchases may be made without formal bids or quotations, and appropriate documentation shall be maintained on these purchases to support sole source procurement.
4. Purchases of electronic journals, subscriptions, and databases for libraries shall be procured through the institution's procurement or contract office in instances when a competitive process can be used.
5. In addition, any required electronic or written agreements to license journals, subscriptions, or databases shall be routed through the institution's procurement or contracts office for review and approval prior to use.
6. Appropriate documentation must be maintained for purchases to support sole source procurement.
7. Additionally, these items may require the approval of the Fiscal Review Committee if the purchase exceeds the Fiscal Review Committee threshold

E. Federal Guidelines

1. Purchases utilizing federal funding are to follow federal guidelines regarding such purchases. Purchases for goods or services shall not be made from vendors on the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

F. Utility Contracts

1. The institution shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal and other services for which a rate for the use thereof has been established by a public authority in such manner as the institution deems to be in the best interest of the State of Tennessee.
2. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with this policy, unless it has been determined that such purchase is single source. If such purchase has been determined to be single source, the purchase shall then be made pursuant to Section XXIV. B., Non-competitive negotiation, of this TBR Purchasing Policy.

XXV. Contracts and Agreements

- A. All contracts and agreements will be in conformance with TBR Policy 1:03:02:10 Approval of Agreements and TBR Guideline G-030, Contracts and Agreements.

- B. No agreement of any nature which requires the expenditures of funds shall extend beyond the end of fiscal year in which it is entered into unless expressly subject to the condition that the institution or college of applied technology shall have the right to terminate the agreement at the end of any fiscal year in the event that sufficient funds are not appropriated by the General Assembly and/or budgeted for continuation of the agreement.
- C. All agreements, contracts and subcontracts shall contain all necessary affirmative action and nondiscrimination requirements provided by Federal or State laws and regulations.
- D. No contract for purchase of materials, supplies, equipment or services shall be awarded pursuant to these procedures unless funds have been appropriated and are available for the purchase. No contract shall be entered into in addition to the contract resulting from acceptance of a bid and issuance of a purchase order except pursuant to TBR Policy No. 1:03:02:10, Approval of Agreements.
- E. Contracts containing no financial consideration may be negotiated.
- F. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.
- G. A revenue contract shall be used to formalize an agreement in which a TBR institution provides specific deliverable goods or services for monetary compensation. Revenue contracts shall conform to the requirements of this policy, TBR Policy 1:03:02:10 and G-030.
- H. Individuals who execute agreements, contracts or subcontracts containing impermissible clauses may be subject to personal liability (T.C.A. § 12-3-105)
- I. Limitation of Liability - Personal, Professional and Consultant Service Contracts.
 - 1. The provisions of this Section XXV subsection I. are not required to be followed for contracts of adhesion; for such contracts, the provisions of G-030 Section 11 subsection Contract of Adhesion may be applied.
 - 2. The Chancellor or designee, President or designee, and the Vice Chancellor for the Colleges of Applied Technology or designee may approve limitations of liability below two (2) times the value of the contract and limitations of warranty in contracts for personal services, professional services, and consultant services.

- a. Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.
 - b. Not Authorized. In no event shall a limitation of liability or warranty permitted under this Section limit the liability of the contractor for intentional torts, criminal acts, or fraudulent conduct. This Section does not authorize any further limitation of the legal rights of TBR as a state entity, does not constitute a waiver of sovereign immunity, and does not authorize a cause of action against TBR in any jurisdiction.
- 3. Institutions may purchase software for use restricted solely to academic teaching or research upon terms which may limit the contractor's liability or warranties; provided, that in no event shall the liability of the contractor be limited for intentional torts, criminal acts, or fraudulent conduct.
 - a. Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.
- 4. Institutions may acquire software or services, materials, supplies and equipment free or at a nominal cost upon terms which may limit the contractor's liability or warranties; provided that in no event shall the liability of the contractor be limited for intentional torts, criminal acts, or fraudulent conduct.
 - a. Approval Process. The request made under this Section must be submitted in writing, with appropriate supporting information, to the approving authority and must be signed by the Chief Procurement Officer of the institution.
- J. Limitations of Liability – Materials, Supplies, Equipment and Services.
 - 1. The provisions of this Section XXV subsection J. are not required to be followed for contracts of adhesion; for such contracts, the provisions of G-030 Section 11 subsection Contracts of Adhesion may be applied.
 - 2. The Chancellor or designee, President or designee, and the Vice Chancellor for the Colleges of Applied Technology or designee may approve contracts for the purchase of materials, supplies, equipment and services when such contracts contain limitations of the liability of contractors for damage claims.

- a. Not Authorized. The approving authority is not authorized to approve limitations of contractor liability for intentional torts, criminal acts, or fraudulent conduct; nor is the approving authority authorized to accept limitation of liability for an amount less than two (2) times the value of the contract. Further, Sections I. and J. do not authorize

TBR or its institutions to indemnify contractors for the acts or negligence of the contractors or third parties.

- b. Approval Timeliness. Any request to the approving authority under this Section must be made at an appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the state in competitive procurements. In a formal ITB process, the procuring institution may determine to request the approving authority's approval under this Section I. after receiving written comments from potential proposers. If the approving authority approves such request, an amendment to the ITB may be made. An institution may request, and the approving authority may approve, initiation of a new procurement process, including a contractor's limitation of liability, at any stage of the procurement process and may authorize negotiation of a limitation on a contractor's liability in circumstances in which the applicable procurement process has failed to provide a qualified proposer or a responsive bid.
- c. Approval Process. The request under this Section J. must be submitted in writing to the approving authority and must be signed by the Chef Procurement Officer. The request must contain justification that addresses the following:
 - (1) The text of the limitation of liability sought to be used;
 - (2) The risks of liability to the state created by the information technology services and/or products to be purchased under the contract, and the impact on the state of allowing the limitation;
 - (3) The conditions of the market which justify a limitation of liability;
 - (4) The anticipated impact on the state's procurement if limitation of liability is not approved; and
 - (5) The identification of one or more persons at the procuring TBR institution familiar with the information set forth in the request.

- d. The approving authority may deny or approve the request or may authorize limitation of liability under other language than that proposed in the request.
- e. Notwithstanding the above, the approving authority may authorize, with respect to contracts for telecommunications and information technology goods and services, a limitation of liability of not less than two (2) times the value of the contract provided that the limitation of liability permitted under this paragraph shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Any limitation beyond that permitted in this paragraph must be approved by the Chancellor. T.C.A. § 12-3-315 and General Services Rule 0690-3-2

XXVI. Coordination of Procurement Functions among System Institutions and with the University of Tennessee System

- A. In all contracts and other bid processes, wording should be included that would allow TBR member institutions and UT institutions to purchase under the terms and conditions of the bid of the individual institution unless to do so would not be potentially helpful to other schools, or unless to do so is not in the best interests of the institution.
- B. TBR institutions shall also be permitted to purchase under the terms and conditions of a contract or bid of the UT System if the contract or bid authorizes TBR institutions to do so.
- C. That is to say that TBR institutions and UT institutions may purchase under the bid of any other institution in either system if language in the bid documents specifies that the other institutions may do so.
- D. Sometimes an exception applies, and procurement is made without a bid process; in such situations, TBR and UT institutions may purchase off the contract resulting from the procurement process as long as the contract specifies that they may do so.

XXVII. Life-Cycle Costs

- A. It is the policy of TBR to use the life cycle costs of commodities as developed and disseminated by the federal government when feasible. (T.C.A. § 12-3-602)
- B. In determining life cycle costs, the acquisition cost of the product, the energy consumption and the projected energy cost of energy over the useful life of the product and the anticipated resale or salvage value of the product may be considered in the evaluation.

(T.C.A. § 12-3-606)

XXVIII. Energy Efficiency Standards

- A. Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards that are used by the Federal Government in its contracting for major energy-consuming products, as well as energy efficient best practices.
- B. TBR institutions shall use energy efficiency standards prescribed by Energy Star for the purchase of energy-consuming products.
- C. The Energy Star website (<http://www.energystar.gov>) provides a qualified list of products and commodities meeting Energy Star's minimal energy specifications, life cycle costing calculations, life cycle formula information and qualified products that meet Energy Star's rating for using less energy and helping to protect the environment. (T.C.A. §§12-3-604 & 12-3-605).
- D. Products and commodities listed on the Energy Star website's list of qualified products and commodities will be used as "acceptable brands and models" on bid documents.
- E. The minimal energy specifications for products and commodities listed on the Energy Star Qualified Products list (see link above) must be included in the line item specifications on all bid documents for the purchase of major energy-consuming products.

XXIX. Disposal of Surplus Property

- A. Surplus property is personal property which has been determined obsolete, outmoded, unusable or no longer usable by the institution, or property for which future needs do not justify the cost of maintenance and/or storage.
- B. Disposal of such property must be in accordance with TBR Policy No. 4:02:20:00, Disposal of Surplus Personal Property.

XXX. Prohibited Transactions

- A. No personal items shall be purchased through the institution or from funds of the institution for any employee of the institution or any relative of any employee.
- B. No employee of an institution responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation.

- C. Whenever any contract is awarded contrary to the provisions of these policies and procedures, the contract shall be void and of no effect, and if the violation was intentional, the employee responsible for the purchase shall be liable for any state funds paid contrary to these policies and procedures.

XXXI. Procurement Manual

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

XXXII. Reports

- A. Reports shall be submitted to the TBR Central Office as follows:
 - 1. Small/Minority/Women-Owned Business Report. This report consists of transactions with minority-owned, women-owned, and small businesses required by T.C.A. § 12-3-808 shall be reported to the TBR Director of Purchasing and Contracts on a quarterly basis (January-March, April-June, July-September, and October-December).
 - 2. Group Purchasing Report. This report consists of transactions procured with comparison pricing from group purchasing organizations required by T.C.A. § 49-7-124 and shall be reported to the TBR Director of Purchasing and Contracts on an annual basis.
 - 3. RFP Diversity Report. This report consists of contracts issued from request for proposals for goods and/or services pursuant to T.C.A. § 12-3-807(b) and shall be reported to the TBR Director of Purchasing and Contracts.

XXXIII. Exceptions

- A. Any exceptions to the policies and procedures established herein shall be subject to the approval of the Chancellor or designee.
- B. An institution may devise and document procedures for an Alternate Competitive Procurement Method and use the methodology in a specific contractor selection process, provided that prior, written approval of the Chancellor or designee is obtained for the proposed method to be used in the specified instance.

XXXIV. Council of Buyers

- A. The Chancellor has established a Council of Buyers.

1. The Council shall be comprised of at least one (1) procurement representative from each institution, and representatives from the TBR System Office appointed by the Chancellor.
2. The Council should meet quarterly, or at minimum semi-annually, or upon request of the Chancellor or designee, and shall have the responsibilities including but not limited to the following:
 - a. Development of uniform procedures, forms, and general conditions governing procurement which may be feasible and practicable for use by all institutions in the System, including affirmative action and equal opportunity provisions, for review and approval by the Chancellor. Uniform procedures, forms, and general conditions governing procurement developed by the Council of Buyers shall be posted at the TBR web site.
 - b. Formulation of standard specifications for purchase of specific materials, supplies, equipment, and/or services which may be feasible and practicable for use by the institutions, for review and approval by the Chancellor or designee. Standard specifications for purchase of specific materials, supplies, equipment, and/or services developed by the Council of Buyers shall be posted at the TBR web site.
 - c. Consideration of the feasibility and advantages of possible term contracts for the System, of designation of certain institutions as responsible procurement agents for specific materials, supplies, equipment, and/or services for the System, and of the possibility of coordinating procurement functions among institutions within geographic areas, with recommendations to be submitted to the Chancellor.

d. Formulation of a uniform code of ethics for governing the professional conduct of employees responsible for procurement. (Exhibit 3)

e. Any other matters referred to the Council by the Chancellor or designee.

Exhibits

- Exhibit 1 - Protest Bond (docx /18.65 KB)
- Exhibit 2 - Minimum General Bid Conditions (pdf /32.76 KB)
- Exhibit 3 - Code of Ethics in Procurement and Contracting (pdf /24.81 KB)
- Exhibit 4 - Purchases from Small, Minority, and Women Owned Businesses (pdf /9.43 KB)

Sources

Source: TBR Meetings, March 5, 1976; June 30, 1978; December 12, 1980; September 18, 1981; June 25, 1982; September 30, 1983; September 20, 1985 ; December 4, 1987; June 24, 1988; June 30, 1989; September 22, 1989; September 21, 1990; June 28, 1991; June 25, 1993; September 23, 1994; September 20, 1996, March 7, 1997, December 5, 1997; March 27, 1998, December 4, 1998; June 28, 2002; June 27, 2003, April 2, 2004; September 30, 2005; December 8, 2006; March 30, 2007; June 29, 2007; September 28, 2007; March 28, 2008; December 4, 2008; June 19, 2009; TBR Board Meeting September 25, 2009. Revisions to Exhibits: 9/13.

Method of Administration for Compliance with Office of Civil Rights Guidelines, Title VI, Title IX, & Section 504: G-120

Policy/Guideline Area

General Guidelines

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The purpose of this guideline is to establish the operational guidelines for compliance with Office of Civil Rights guidelines as well as Title VI and Title IX and Section 504 at institutions governed by the Tennessee Board of Regents.

Policy/Guideline

1. Introductory Information

1. 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 Colleges of Applied Technology and TBR Community Colleges offering vocational technical education was developed in 1985 in accordance with federal laws and regulations.

2. Organization to Meet Civil Rights Responsibilities

1. Organization of Compliance Program

1. Administrative Unit Directing Compliance Program

1. 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

1. 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

1. Chancellor, Tennessee Board of Regents
2. Vice Chancellor for Access and Diversity Tennessee Board of Regents

1. 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

1. Review of internal policies and procedures
 1. TBR Senior Staff members review policy matters relating to their respective areas and facilitate further review by the appropriate Sub-Councils of institutional representatives.
 2. Following review of the various sub- councils, policy matters are then transmitted to the Presidents' Council or the Tennessee College of Applied Technology Directors' Sub-Council.
 3. If approved by the Presidents' Council or TCAT Directors' Sub-Council and the Chancellor, policy additions or revisions are transmitted to the Tennessee Board of Regents for approval.
2. Development of a Civil Rights Compliance Program
 1. 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.
3. Development of technical assistance activities

1. 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.

4. Coordination of three components

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

2. Personnel Assigned to Implement the Compliance Program

1. Vice Chancellor Access and Diversity Tennessee Board of Regents 1415 Murfreesboro Road, Suite 340 Nashville, Tennessee 37217 (615) 366-3920
2. Vice Chancellor Tennessee Colleges of Applied Technology, Tennessee Board of Regents 1415 Murfreesboro Road, Suite 314 Nashville, Tennessee 37217 (615) 366-4460
3. Director Access and Diversity Tennessee Board of Regents 1415 Murfreesboro Road, Suite 340 Nashville, Tennessee 37217 (615) 365-1508
4. Legal Counsel Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350 Nashville, Tennessee 37217 (615) 366-4438
5. Vice Chancellor Business and Finance Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350 Nashville, Tennessee 37217 (615) 366-4413
6. Vice Chancellor Academic Affairs Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350 Nashville, Tennessee 37217 (615) 366-4406
7. Associate Vice Chancellor Facilities Development Tennessee Board of Regents 1415 Murfreesboro Road, Suite 350 Nashville, Tennessee 37217 (615) 366-4432

3. Review of State Policies and Programs

1. Conduct of State Policy Review

1. Internal Operations of State Agency

1. 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.
2. 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.
 1. The Legal Counsel for the TBR will assist in the review.
3. 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

1. 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.
2. 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.
3. All formulas used to distribute federal and state funds to any institution will be reviewed annually for discriminatory factors.
4. The Legal Counsel and Vice Chancellor for Business and Finance for the TBR will assist in the review of funding formulas.
5. The formulas reviewed will affect funding to institutions for the following programs:
 1. Tennessee Colleges of Applied Technology
 2. Community colleges

6. 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

1. 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 IX, and Section 504 of the Rehabilitation Act.
2. The Vice Chancellors for Access and Diversity, Colleges of Applied Technology, and Academic Affairs will take responsibility for such reviews.

4. Competitive Grants

1. 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.
2. Methods of disseminating information, providing technical assistance, and awarding competitive grants will be reviewed for discriminatory factors.
3. The Legal Counsel for the Tennessee Board of Regents will assist in the review of the policies and procedures.
4. 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

1. Actions initiated by local entities, including community colleges, and colleges of applied technology, are reviewed by members of the TBR System Office Staff to insure that local entities do not discriminate against target populations.
2. The Legal Counsel of the TBR will assist in the review.

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

6. State Operated Institutions

1. Each year, the Vice Chancellor for Tennessee Colleges of Applied Technology will be responsible for the review of the policies and guidelines for colleges of applied technology 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.
2. The Vice Chancellor for Academic Affairs will be responsible for the review of policies and guidelines for community colleges and colleges of applied technology 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.
3. The Director of Access and Diversity and Legal Counsel of the TBR will assist in the review.
4. Results will be reported in the annual report according to guidelines outlined in Part V of the MOA.

2. Method of Review for State Policies and Procedures

1. The staff member assigned responsibility for each review will examine each policy and guideline in relation to the OCR guidelines and Title VI, Title IX and Section 504 of the Rehabilitation Act and develop any recommendations for change.
2. 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.

3. State Policy Review Schedule

1. The schedule for policy review will begin on September 1 annually and the annual report will be submitted on July 1.

2. The report will identify any significant changes in policies or guidelines that could affect civil rights compliance.

4. Review of State Institutions

1. The Tennessee Board of Regents operates 26 Tennessee Colleges of Applied Technology, and 13 Community Colleges which are state institutions.
2. These state institutions will comprise a pool of sub recipients which will follow the procedures and schedule outlined in Part IV.
3. 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.
4. If a state operated institution is found to be in non-compliance, the TBR will assume the responsibility to assure voluntary compliance.
5. Results of the reviews will be reported in the annual report according to guidelines outlined in Part V of the MOA.

4. Ensuring Compliance by Sub-recipients

1. 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.

2. 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.
 1. Annually, at least 11% of the sub recipient pool will be scheduled for an agency level review.
 2. The Divisions of Tennessee Colleges of Applied Technology, 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.
3. Beginning with a pool of all sub recipients, the following will be omitted:
 1. Those previously reviewed (if any) in the five year cycle;
 2. 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
 3. Those that are subjects of pending or recent investigations or enforcement proceedings by OCR.
4. 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:
 1. Knowledge of an institution's practices that raise potential civil rights compliance problems;
 2. Reports of possible non-compliance obtained from complaints filed by parents, students, civil rights groups or others;
 3. Reports from State Civil Rights Agencies or State Advisory Committees that raise questions about potential civil rights compliance problems; and

4. information or reports on institutions from OCR that indicate possible compliance problems.

5. Conducting the reviews

1. The Tennessee Board of Regents Staff will conduct agency level reviews of institutions using data and documents already available in its system office.
2. Following are documents and data to be examined in the review:
 1. VEDS enrollment data.
 2. Annual program evaluation reports.
 3. Annual accountability reports.
 4. Annual appropriations requests.
 5. Capital Outlay requests.
 6. Quarterly enrollment reports.
 7. Annual analysis of faculty salaries by sex and race.
 8. Annual affirmative action reports.
 9. Annual budget analysis detailing promotions and salary distribution.
 10. Request for new programs.
 11. Five year plan data, and annual update.
 12. Job Training Coordination Plan and update.
 13. Information derived from complaints or reports from consumer groups, public agencies, parents, or students.
 14. Letters of findings issued by OCR.

15. EEO complaints.

16. Audit reports.

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

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

6. Notification of Institutions

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

2. 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:

1. 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;
2. That although the agency level review revealed no apparent problems, the institution will, nevertheless, be the subject of an on-site review; or
3. 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.

7. Timetable for Agency Level Review

1. July: Selection of institutions to be reviewed and notification sent to President or Director.
2. July-August: Information gathered and file prepared on each institution being reviewed.
3. September: Analysis of information as to compliance.
4. November: Letters of notification issued indicating results of agency level reviews.

3. Identification of Institutional Violations through On-Site Reviews

1. Number of Reviews per Year

1. An on-site review will be conducted for a minimum of 11% of the institutions in each of the agency level review pools.
2. The agency level review criteria will assign institutions points according to an indicated degree of possible non-compliance.

3. 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.
4. 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

1. All institutions having indicators of compliance problems during the agency level review will be targeted for on-site review.
2. Agency level findings that will trigger an on-site review include:
 1. 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.
 2. 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.
 3. 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.
 4. 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.
 5. 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.

3. 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

1. 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.
2. The data utilized in the agency level review only indicate possible non-compliance by an institution.
3. The on-site review will be designed to investigate related factors in order to determine compliance or non-compliance.
4. Examples of areas of further investigation for each criterion are outlined below:
 1. Investigation Criteria Problem Areas;
 2. Enrollment ratios;
 3. Disproportionate Methods of enrollments and registration;
 4. Recruitment procedures;
 5. Enrollment trends;
 6. Decreasing enrollments;
 7. Changes in target populations;
 8. Registration procedures;
 9. Changes in school admission policy;
 10. Feeder School Ratios;

11. Exclusion of target populations methods of recruitment and registration;

12. Employment Trends;

13. Reduction in target population employed;

14. Employment policies and procedures;

15. Recruitment and position announcement policies;

16. Planning Analysis and Reports;

17. Any signal of non-compliance;

18. Recommendations for changing institutional procedures.

4. Problem areas not addressed in the agency level review

1. 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.

2. The following indicators are examples of areas of inquiry for the on-site review.

1. Discriminatory faculty assignments;

2. Failure to provide handicapped student access to programs;

3. Procedures for faculty selection;

4. Procedures used for notifying the public of the sub recipient's nondiscriminatory policies and practices;

5. Numerical limitations for admission of students to vocational education programs;

6. Apprentice or other institution limitations for enrollment;

7. 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;

8. Relationships with unions or other agencies providing training;
9. Special provisions or programs for handicapped students or other special needs students;
10. Relationship of programs for special needs students to total vocational programs;
11. Programs of financial assistance for students;
12. Guidance and counseling procedures and activities;
13. Written policies and procedures for recruitment and enrollment;
14. Placement procedures and opportunities;
15. All agency level review findings of compliance will be verified.

5. Timetable

1. November: Notification of on-site review
2. February - April: On-site reviews conducted and institution notified of results
3. May - June: Voluntary compliance plans due.

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

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

1. Content and purpose of OCR guidelines.
 2. Components and purpose of MOA.
 3. Data and information requested by institutions relative to discriminatory practices and corrective options.
 4. Information and guidelines to assist in achieving compliance.
2. Institutions will be notified of the availability of assistance through correspondence, presentations at meetings, and on an individual basis.
 1. The frequency of notification will vary but will occur at least once a year when notification of approval for funding is sent.
 2. 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.
 3. 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.
 4. The following staff of the Tennessee Board of Regents will be responsible for technical assistance activities:
 1. Vice Chancellor for Access and Diversity,
 2. Director of Access and Diversity,
 3. Vice Chancellor for Tennessee Colleges of Applied Technology,
 4. Legal Counsel; Tennessee Board of Regents,
 5. Vice Chancellor for Business and Finance,
 6. Vice Chancellor for Academic Affairs

5. Obtaining Voluntary Compliance

1. Development of the Voluntary Compliance Plan

1. 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.
2. The Compliance Program Director will determine if the violations are major or minor and the institutions will comply as follows:
 1. 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.
 2. 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.
 3. 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

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

1. An institution is not in compliance and fails to take corrective action;
 2. The institution fails to submit a voluntary compliance plan (notification of OCR will occur no later than 90 days after on-site review);
 3. 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)
2. 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.

5. Annual Civil Rights Compliance Report

1. 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.

1. Compliance Organization and Staff

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

2. 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.

3. 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.
4. Technical Assistance
 1. List of institutions requesting technical assistance.
 2. Summary of other technical assistance.
5. Institutions Referred to OCR
 1. List of institutions referred to OCR for failure to achieve voluntary compliance.
 2. Any response from OCR.
6. 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.

Sources

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



ATTACHMENT 12

(Discrimination and Harassment – Complaint and Investigation Procedure)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Discrimination & Harassment - Complaint & Investigation Procedure: P-080

Policy/Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The purpose of this Guideline is to supplement Board Policies 2:02:10:01 and 5:01:02:00 relative to the orderly resolution of complaints of discrimination or harassment 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, and any other category protected by federal or state civil rights law related to the institutions, and office of the Tennessee Board of Regents.

Policy/Guideline

1. Introduction

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

2. General Statement

1. 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.
2. 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.
 3. 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.
 4. 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.

3. Discrimination and Harassment

1. 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.

2. 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;
 1. Adversely affects a term or condition of an individual's employment, education, participation in an institution's activities or living environment;
 2. 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
 3. 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.
3. 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.

1. The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment. Campus policies may delineate additional examples.

4. 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.

4. Consensual Relationships

1. 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.
 1. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

5. Procedures

1. 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.
 1. Students may be placed on interim suspension under the appropriate circumstances pending the outcome of the investigation.

2. 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.

2. 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 must be brought within 365 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.
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. Exhibit 1 is a sample complaint form.
 1. The complaint shall be signed by the Complainant.
 2. However, when the Complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken.
 3. 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.

1. The Complainant should be informed of other available processes such as the employee grievance/complaint process, or a student non-academic complaint process.

3. 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.

1. All investigatory notes and documents shall be attorney work product.

2. 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.

1. 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.

1. 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.
 1. In certain circumstances, the lead institution for the TCAT may be asked to conduct the investigation.
 2. Investigations of complaints made against TCAT students will be undertaken by TCAT Student Services personnel.
 3. 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.
 1. This investigation shall include interviews with both the Complainant and the Respondent, unless either declines an in-person interview.
 2. The investigation shall also include interviews with relevant witnesses named by the Complainant and Respondent.
 3. The purpose of the investigation is to establish whether there has been a violation of the Guideline.
 4. 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.

1. 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.
2. Information may need to be revealed to the Respondent and to potential witnesses.
3. However, information about the complaint should be shared only with those who have a need to know about it.
4. 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.
5. 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.
6. Additionally, the Complainant shall be given assurances that measures will be taken against the Respondent should there be retaliation against him or her.
7. Retaliation is prohibited and should be reported to the investigator immediately.
8. 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.
 1. 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.
 1. Either party has the right to end informal processes at any time.
 2. Mediation will not be used in cases involving sexual assault.
 3. 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.
 1. 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.
 2. 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.
 3. 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.
 4. No working papers, statements, etc. generated in the investigation should be attached to the report.

5. 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.
 1. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure.
 2. 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.
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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.
 1. 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.
 1. 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.
 2. 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.

1. 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.
2. This file shall be maintained in a location designated by the President.
3. 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.

4. 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.
 1. The appeal process shall consist of an opportunity for the parties to provide information to the institution's attention that would change the decision.

2. 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.
 1. 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.
 2. 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.

6. Other Applicable Procedures


1. 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).

7. Other Available Complaint Procedures

1. 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.

Exhibits

-  [Exhibit 1 - Discrimination Complaint Form](#) (pdf /38.34 KB)

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).



ATTACHMENT 13

(Employee Grievance/Complaint Guideline)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Employee Grievance-Complaint Guideline: P-110

Policy/Guideline Area

Personnel Guidelines

Applicable Divisions

TCATs, Community Colleges, Universities, System Office

Purpose

The purpose of this guideline is to establish the process regarding employee grievances and/or complaints at the Central Office and institutions governed by the Tennessee Board of Regents.

Definitions

- Grievance (Committee review available) – An employee may only grieve actions the institution/TCAT has taken against the employee which:
 - Violates institution/TCAT or TBR policy, or involves an inconsistent application of these same policies;
 - 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
 - Violates a federal or state statute not covered by TBR Guideline P-080.
- 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.
- Employee - For purposes of the grievance and complaint procedures, an employee is defined as faculty (though not including faculty on adjunct contracts), executive, administrative, or professional

staff. Probationary employees, student workers and graduate assistants are not included in the definition of employee.

- Employment Action – Employment action is the demotion, suspension without pay, termination of an employee, or work assignments or conditions of work which violate statute or policy.

Policy/Guideline

1. Application of Guideline

1. This Guideline applies to employees of an institution/TCAT and has been developed to assist in drafting procedures for addressing grievances and complaints filed.
 1. There shall be two types of procedures, which each institution/TCAT shall address through policies developed pursuant to this Guideline.
 2. The two types are:
 1. Grievances, which are subject to committee review; and
 2. Complaints, which must be resolved without committee review.
 3. Standard grievance forms shall be made available to employees at each work site, but no grievance may be denied because a standard form has not been used.
2. The following is a minimum which must be incorporated in the institutional/TCAT grievance and complaint procedures. The procedures may vary from institution to institution, but may not establish any right to a hearing except as set out herein.
3. This Guideline has no application to a termination procedure initiated against a tenured faculty member under TBR policy No. 5:02:03:60 Section IV.I., or 5:02:03:70 Section V.I.2.
 1. This Guideline is not to be used for support staff employees who are demoted, suspended without pay, or terminated.

2. In accordance with T.C.A. § 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.

1. Support staff employees who wish to challenge other employment actions not covered by P-111, however, may utilize the procedures set forth in the guideline, as applicable.

2. If the grievance involves or is based on unlawful discrimination or unlawful harassment, the process set out in Guideline P-080 must be utilized; however if the President's/Director's/Chancellor's, as appropriate, decision includes demotion, suspension without pay, or termination, the employee so disciplined may use this procedure or the procedure described in TBR policy 1:06:00:05.

4. An employee may choose to utilize the procedure for review by the grievance committee established pursuant to this Guideline in 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 IV.I.1.b or 5:02:03:70 Section V.I.b.(2) (suspension of tenured faculty) or TBR Policy No. 5:02:03:10 Section III (O)(2) (suspension of tenured faculty at TCATs).

5. The institution/TCAT 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 TCATs), 5:02:02:20 (Faculty Promotion at Universities), or 5:02:02:30 (Faculty Promotion at Community Colleges).

2. Complaint Procedure

1. 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.

1. If the complaint arises from a repeated or continuing occurrence, the time limit begins from the date of the last such occurrence.

2. Any complaint not presented within the time limit is waived and shall not be considered.

3. Once a final determination is made, the employee may not later present the same complaint in an attempt to gain a more favorable outcome.
2. The institution/TCAT policy shall indicate with whom a complaint is to be filed. It should also indicate that a complaint must be submitted in writing.
3. Resolution of complaints at a minimum requires the institution/TCAT to:
 1. Allow the employee to present facts and/or materials;
 2. Investigate the dispute; and
 3. Attempt to find a solution.
 1. The President/Director or his/her designee shall be the final decision maker.
 2. Complaints do not include a right to any type of hearing, adversarial proceeding, nor the right to appeal to the Chancellor.

3. Grievance Procedure

1. Procedure
 1. A grievance must be initiated within fifteen (15) workdays after the employee receives notice or becomes aware of the action which is the basis for the grievance.
 2. The administrator considering the grievance at each step shall issue a written decision with specific reasons stated for the decision.
 3. If the employee is not satisfied with the decision at any step, he/she must carry the grievance forward to the next step within fifteen (15) workdays after receiving the written decision.
 1. If the employee does not carry the grievance forward within fifteen (15) workdays, the grievance procedure shall be terminated and the grievance disposed of in accordance with the last written decision.
 1. For purposes of this procedure, the term "workdays" refers to Monday through Friday.

4. Any party involved in the grievance proceeding may request an extension of any deadline set forth in the policy. The institution shall establish procedures for consideration of extension requests.
5. Once a grievance is initiated, the grievant may not later present the same grievance again in an attempt to gain a more favorable outcome.

2. Testimony, Witnesses and Representation

1. At every step, the employee may testify and present witnesses and materials in support of his/her position.
 1. The testimony of an employee, given either on his/her own behalf or as a witness for another employee, will not subject an employee to retaliatory action.
2. At every step, the employee may be accompanied by a representative as defined by the institution which may also specify the parameters of participation by the representative during the hearing process.
 1. a. At the discretion of the panel chair, additional employees from the unit may be allowed to attend the employee panel hearing conducted as the final step.

3. Steps of Review

1. Step 1-- Supervisor or Administrator Instituting Employment Action:
 1. Within fifteen (15) workdays after the employee receives notice or becomes aware of the action which is the basis for the grievance, the employee completes a Grievance Form (which may be obtained from Human Resources), submits it to Human Resources and provides a copy to his/her supervisor or the administrator instituting employment action. While a particular form is not required to file a grievance, the employee must make it clear that she/he intends to utilize the grievance procedures for resolution of the employment action.

2. Within fifteen (15) workdays after receipt of the grievance, the supervisor or administrator initiating employment action and the employee meet and discuss the grievance in a face-to-face meeting.
3. If the supervisor or administrator was not the one who recommended the original employment action, or is recommending a change from the original employment action, the supervisor or administrator will make a recommendation to the administrator who made the original employment action.
4. Any changes from the original employment action must be approved by the President or Director, as appropriate, before being communicated to the employee.
5. Within fifteen (15) workdays after the face-to-face meeting, the supervisor or administrator must communicate the decision in writing to the grievant with specific reasons stated for the decision.
6. If the supervisor or administrator fails to respond or if the decision is not satisfactory to the employee, the employee may carry the grievance forward to Step 2.

2. Step 2--Next Higher Level of Management:

1. Within fifteen (15) workdays after receiving the written decision at Step 1, if the employee is not satisfied with the result of Step 1, the employee must notify Human Resources that he/she wants further review.
 1. Human Resources schedules a face-to-face meeting to occur within fifteen (15) workdays after receiving notice that the employee wants further review of the next level administrator.
2. Within fifteen (15) workdays after the face-to-face meeting, the next level administrator issues a written decision that includes specific reasons for the decision.
3. Any changes from the original employment action must be approved by the President or Director, as appropriate, before being communicated to the employee.

3. Step 3--Hearing:

1. Within fifteen (15) workdays after receiving the written decision at Step 2, the employee can request a grievance hearing before a panel of employees.
2. The employee must notify Human Resources in writing whether he/she wants a hearing before an employee panel.
3. Alternatively, the employee may request a hearing under TBR Policy No. 1:06:00:05 (Cases Subject to TUAPA), if applicable.
4. If the employee requests a hearing before an employee panel, Human Resources or the appropriate institutional person as defined by the institution policy selects the panel members, convenes the hearing and arranges for the grievance to be heard.
5. The employee grievance panel may include non-exempt staff employees, exempt staff employees, or a combination of both exempt and non-exempt employees.
6. The panel members representing the unit where the employee works may not serve on the grievance panel.
7. Every effort should be made to include minorities, i.e. ethnic minorities and women, in the composition of the committee.
8. The grievance panel shall hear the grievance within fifteen (15) workdays, if practicable, after the date on which the employee submits his/her written request to Human Resources.
9. The written recommendation of the institutional panel or commission is subject to review by the President, TCAT Director, or in the case of grievances at the TBR Central Office, the Chancellor.

4. Step 4--Review by the President/ TCAT Director/ or Chancellor, as appropriate:

1. The written recommendation of the grievance panel will be forwarded to the President, TCAT Director, or Chancellor, as appropriate.

2. Within fifteen (15) work days, if practicable, the President, TCAT Director, or Chancellor, as appropriate, or a designee will notify the grievant of the final decision.

4. 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.

4. Non-Retaliation

1. No employee shall retaliate or discriminate against another employee because of the latter employee's filing of a grievance or complaint.

2. 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.

3. 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.

5. Responsibility for Implementation

1. The President/Director/Chancellor, as appropriate or his /her designee of the institution/TCAT has ultimate responsibility for implementation of the grievance and complaint procedures.

2. 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.

6. Maintenance of Records

1. Copies of written grievances and complaints, and accompanying responses and documentation should be maintained at a specified location(s) at the institution/TCAT for at least two years after the date of the employment decision.

2. If a finding adverse to the grievant/complainant is made, the finding shall be maintained in the grievant/complainant's personnel file.



ATTACHMENT 14

(General Instructions on Form and Execution of Contracts)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Contracts and Agreements: G-030

Policy/Guideline Area

General Guidelines

Applicable Divisions

TCA²s, Community Colleges, Universities, System Office

Purpose

The purpose of this guideline is to establish the criteria and process for form and execution of contracts as applied to the institutions governed by the Tennessee Board of Regents.

Policy/Guideline

- General Contract Provisions
 - Approval Required
 - In general, the Chancellor for the System Office and for System-wide agreements, the President of an institution, or the Vice Chancellor for the Tennessee Colleges of Applied Technology 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:
 - Contracts, including grant agreements, which do not conform to this guideline;
 - Dual services agreements in which the Tennessee Board of Regents (“TBR”) System Office is the vending or procuring party;
 - Certain real property agreements (as provided in other policies and guidelines);
 - Any agreement required to be approved by the Chancellor under TBR Policy 1:03:02:10 Section I, G.;
 - 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;
 - Banking and other financial services agreements required by the vendor; and
 - 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 System Office if no substantive changes have been made.

- Purchase orders issued pursuant to purchase orders and/or contracts which have already received approval by the System Office do not require additional submission to the System Office.
 - Grants which conform to the requirements of this guideline do not have to be approved at the System 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 System 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 System Office for approval.
- Each institution maintain a written contracts manual (may be in electronic format) which sets forth any procedures of the institution which are in addition to and necessary to comply with this guideline.
- 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.
- All relevant documents should be incorporated by reference, with the order of interpretation clearly set forth.
- 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, forward them to the System Office for approval, if required, along with a copy of the original agreement and any prior amendment or addendum. If a signature

from the System 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.

- All necessary signature approval lines should be prepared by the institution, including that for the TBR.
 - 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.
 - The President/Director or designee must sign all institution contracts that do not require System Office approval.
 - The President/Director or designee must sign all institution contracts required to be submitted to the System Office. If the President/Director or designee's signature has been omitted from contracts prepared and delivered to the System Office, such contracts may be returned to the Institution.
 - When approval by the Chancellor is not required, that signature blank should be marked "not applicable" or should be deleted.
- 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 System 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 System Office.
- Institutions should prepare a sufficient number of originals of all contracts as desired/required by the parties and an original for the System Office if System Office approval is required. Each of the originals of the contract shall bear the original signatures of the parties.
- For contracts which do not require System 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.

- All contracts required to be submitted to the System Office should be submitted prior to the beginning of the contract's original term or renewal.
- All contracts from the colleges of applied technology which require System Office approval shall be first submitted to the Office of the Vice Chancellor for Tennessee Colleges of Applied Technology.
- A contract cannot be extended or amended after the original term has expired.
- A completed Contract Summary Sheet as well as all relevant attachments must accompany all agreements submitted to the System 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.
- Agreements containing blank spaces or omitting required contract provisions will be returned to the institution for correction and must be resubmitted to the System Office for approval.
- Food and Vending Services Contracts. Section I.C. 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.
- Telephone Systems. Section I.C. of this guideline should be adapted and followed as applicable for telephone systems and services contracts.
- Real property and lease agreements are covered by separate procedures found in Guidelines B-025 and B-026.
- 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.

- 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.
- 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 the Board of Standards, January 30, 2007).
- 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 II. 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."

- 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 I.C.2.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 T.C.A. § 2-3-8 and Purchasing Policy No. 4:02:10:00.
- 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 I of this guideline is used between TBR institutions or between a TBR institution and another state entity.)

- Civil Rights Clause

- “The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX 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.

- 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."
- b. See Section I of this guideline for audit language for grants.
- c. No audit clause is required for a one time, fixed payment agreement.

- 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.
- 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.
- 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.
- Illegal Immigrants
 - "Prohibition on Hiring Illegal Immigrants: T.C.A. § 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 (Exhibit 1).
- Unacceptable Provisions

- The Director of Purchasing and Contracts in the System 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 System Office or the Office of General Counsel prior to contacting the vendor regarding modification.
- The following provisions should not be included in any contracts:
 - Provisions requiring the institution to pay taxes (T.C.A. §§ 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 T.C.A. § 9-8-101 et seq.).
 - Payment of travel/per diem expenses in excess of maximum limitations set forth in TBR Policy 4:03:03:00.
 - Provisions designating the governing law of a state other than Tennessee.
 - Provisions requiring the institution to make deposits or payments before goods are received or services are performed (T.C.A. § 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 I.B.5. above.
 - 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.
 - 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)).

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

- 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.
- 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.
- 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.
- Right of vendor to enter institution's premises without notice to remove equipment or product upon alleged default by institution.
- Award of attorneys' fees or costs to vendor in the event of legal action against institution. (T.C.A. § 9-8-307(d)).
- Consent to jurisdiction in courts outside Tennessee.
- Provisions requiring the institution to pay late charges, finance charges or interest in excess of that provided under the Tennessee Prompt Pay Act (T.C.A. § 12-4-701 et seq.).

- Provisions permitting the vendor to take a secured interest in personal property under the agreement.
 - Limitation on time in which state may bring suit. (T.C.A. § 28-3-109).
 - Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act. (T.C.A. § 10-7-101 et seq.).
- Reporting Requirements
 - Institutions shall report quarterly to the Office of Purchasing and Contracts at the System Office the following information (in the format provided by the System Office):
 - Small/Minority/Woman-Owned Business Report - in accordance with T.C.A. § 12-3-8.
 - RFP Diversity Report – report of contracts issued from requests for proposal for goods and/or services pursuant to T.C.A. § 12 -3-807(b).
 - Quarterly Contracts Report for Personal, Professional, and Consulting Contracts – in accordance with Fiscal Review Requirements, institutions shall submit the following two (2) reports*:
 - Contracts Ranging from \$2,000.00 to \$50,000.00
 - Contracts Ranging from \$50,000.00 to \$249,999.99
 - *dollar amounts reported for each contract shall be based on total term of contract, including all renewals.
 - Senate Finance, Ways, and Means Report – institutions shall submit an annual report of all existing service contracts.
- Exceptions
 - The Chancellor or designee may approve exceptions to the requirements of this guideline in appropriate cases.
- Clinical Affiliation Contracts
 - 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").
- General Rules

- 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.
- 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.
- 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.
- 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.
 - 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 System Office for approval. In addition, agreements previously

approved by the System Office may be renewed without System Office approval if no substantive changes are made.

- 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 for single facility (Exhibit 2A)
 - Sample Clinical Affiliation Agreement for multiple facilities, with Attachment (Exhibit 2B)
- Personal Service, Professional Service, and Consultant Service Contracts
 - Scope

XVII. 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.

XVIII. 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. §§ 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. (TBR Policy 4:02:10:00)
 - Procedures for Entering into Personal, Professional and Consultant Service Contracts
 - 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:
 - Prior experience;
 - Organization size and structure of vendor in relation to services to be performed;
 - Qualifications of staff to be assigned to perform the services;
 - Vendor's understanding of service to be performed;
 - Price by unit (or other measurement) of service. Cost must be weighed at least 25%.
- Rules Governing Personal, Professional and Consultant Contracts
 - 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.
 - 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
 - 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.
- In appropriate cases, the institution shall require the contractor to demonstrate proof of appropriate forms of insurance, and/or to provide a performance bond.
- Institutions are responsible for monitoring the Title VI compliance of sub-recipients of federal funds.
- Appropriate language regarding intellectual property rights should be included in contracts developed under this Section III. (TBR Policy 5:01:06:00.)
- 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.
- 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.
- 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 (a) 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 (b) 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:
 - Return to the Institution; or
 - 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.”
- 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:
 - Have policies and procedures in place to comply with the Rule; or
 - 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.
- 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:
 - For personal service contracts that result from an RFP process;
 - For personal service contracts which require System Office approval;
 - For personal service contracts which require Fiscal Review approval; and
 - For all other service contracts, in which the institution's procurement and/or contracts office determines this form is appropriate.
- Grant Agreements
 - 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.

- The following procedures shall govern expenditures for personal, professional or consulting services pursuant to grant contracts:
 - Procedures
 - The institution shall conduct negotiations when possible to ensure that payments are appropriate to support the activity contemplated.
 - A written budget and work program shall be prepared and included in the grant agreement.
 - 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.”

- 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.”
- 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."

- 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 Agreements
 - Sample Personal Service, Professional Service, and Consultant Service Contract (Exhibit 3)
 - Sample Pro Forma Contract (Exhibit 4)
- Option to the Standard Contract
 - The following agreements are an option to the standard contract. They should be used for presenting or participating in a seminar/webinar, and can only be used for events costing \$5,000 or less.
 - Contract for Workshop/Seminar (Exhibit 5)
 - Workshop/Seminar Participation Agreement (Exhibit 6)
- Dual Services Agreements
 - 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.
 - General Rules
 - 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.
 - 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:
 - For faculty workload reduction or extra compensation; or
 - For other employees, compensatory time, overtime payment, workload reduction, or temporary salary adjustment.
- Essential Contents of the Agreement
 - I. The form agreement at the end of this section contains all required elements; however, a few elements are described below:
 - I. A brief description of the services provided or secured from the state agency concerned.
 - II. Include the name and social security number of the employee providing the services.
 - III. 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.
 - IV. Conditions governing employee services and methods of compensation.
 - V. 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 is required prior to payment for services rendered when:
 - An employee of another institution is to be compensated for services other than as a temporary part-time employee; or
 - Compensation is to be paid to another institution or state agency for services to be performed pursuant to an agreement.
 - J. 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.
- Rules Governing Dual Services Agreements with Other State Agencies (Other than the University of Tennessee and Tennessee Board of Regents Institutions)

- 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.
- Approvals - all dual services agreements of this kind require the signature of:
 - An authorized official of the institution or agency procuring the services.
 - 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.
- No dual services agreement which conforms to the requirements of this guideline shall require the approval of the System Office, except dual services agreements in which the System Office is either the vendor or procuring party.
- Rules Governing Dual Services Agreements with the University of Tennessee Institutions
 - 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:
 - Between the employee involved and the other institution pursuant to the provisions in 3. below; or
 - Between the two institutions involved, pursuant to the provisions in 8. below.
 - Contracts between an employee of one system and a procuring institution in the other system are permitted only in the following situations:
 - When the services to be performed are of an infrequent or short term nature.
 - Payment will not exceed the maximum rate provided in TBR Policy No. 5:01:05:00 (Outside Employment and Extra Compensation).
 - 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 3. 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 E. 3. 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.
- When an agreement is made directly between the employee and the institution as discussed in E.3., 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.
- 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.
- Any compensation paid shall not exceed the rate the procuring institution or agency normally pays for such services.
- Conflicts of interest must be avoided.
- In all dual services agreements covered by Section E other than those set forth in paragraph E.3.:
 - A memorandum of agreement must be signed between the two institutions involved.
 - Any payment or transfer of funds for such services must be between the two institutions, and must not involve the individual employee.
 - No employee of an institution may be a party to such agreement.
- Rules Governing Dual Services Agreements between Tennessee Board of Regents Institutions
 - When one TBR institution procures the services of an employee of another TBR institution, the agreement shall take the following form:
 - The agreement shall be between the institutions involved, pursuant to the provisions in 2. below.

- 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.
- 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.
- Contracts between the TBR institutions are permitted in the following situations:
 - 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.
- 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.
- Any compensation paid shall not exceed the rate the procuring institution normally pays for such services.
- 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 (Exhibit 7)
- Access to and Use of Campus Property and Facilities (General use by non-affiliated organizations)
 - 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 VI of this guideline.
 - General Rules

- All use of campus facilities and agreements providing for such use must comply fully with TBR Policy No. 1:03:02:50.
- 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 System Office for approval.
- Agreements which deviate from this guideline must be submitted to the System Office for approval.
- All use of campus facilities must be related to the mission of the institution.
- 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.
- 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: 1:03:02:50
 - Sample Use of Campus Facilities Agreement (Long & Short Versions) (Exhibit 8)
- Additional Forms for Use of Space (Special alternative agreement forms)
 - 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.
 - Mutual Use Agreement - Involving a Tennessee Board of Regents Institution (Exhibit 9)
 - Transient Use Agreement - Involving a Tennessee Board of Regents Institution (Exhibit 10)
 - Tenant Use Agreement - Between Two Tennessee Board of Regents Institutions (Exhibit 11)
 - Mutual or Transient Use - Terms and Conditions For an Agreement Involving a Tennessee Board of Regents Institution (Exhibit 12)
 - Tenant Use - Terms and Conditions For an Agreement between Two Tennessee Board of Regents Institutions (Exhibit 13)
 - Instructions - for filling out Use Agreements (Exhibit 14)

- Types of Agreements not Covered
 - Leases subject to State Building Commission oversight, identified at TBR web site in the Facilities section.
 - 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 1:03:02:50 and in Section V (above) of this guideline.
- Types of Agreements Covered
 - Tenant Use Agreements are arrangements similar to a lease, but occurring between two TBR institutions.
 - Transient Use Agreements
 - 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.
 - Distinct from the event-oriented Use Agreement under TBR Policy 1:03:02:50 and Section V of this guideline.
 - Can be for TBR use of non-TBR facilities, or non-TBR use of TBR facilities.
 - Mutual Use Agreements
 - Similar to Transient Use, except that both parties make use of each other's spaces.
 - Between two TBR institutions or one TBR institution and a non-TBR entity.
 - Instead of financial compensation, the consideration is the mutual use of each other's facilities.
- 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 System 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.

- 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.
- Contracts for acquisition of Hardware, Software and Related Services
 - 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.
 - General Rules
 - 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.
 - 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.
 - All agreements subject to this Section VII 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 System Office for approval.
- The TBR System 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 System Office.
 - Whenever acquiring data processing related products, TBR institutions should first consult the Director of Purchasing and Contracts in the TBR System 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.
- 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 System 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:
 - The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
 - 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.
- 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.

- 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.
- The bidding process must comply with TBR Policy 4:02:10:00.
- 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).
- All bid specifications and all other relevant contract documents must be attached to contracts that are submitted to the TBR System Office for approval.
- Software Licensing and Warranties
 - See also the provisions of TBR Purchasing Policy Sections XV H. and I., and Section 11 of this guideline.
 - 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.
 - 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.

- 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.
- Agreements authorizing the institution to conduct experimentation or testing of hardware, software or related services shall require written approval of the TBR System 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:
 - The institution may not agree to use such experimental products or services in place of existing ones for ordinary academic or administrative purposes.
 - 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.
- Related Services
 - Agreements for related services include those for maintenance and support services.
 - 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.
 - Service agreements are in the nature of personal services irrespective of the form of the service and must comply fully with Section III of this guideline for personal service agreements as well as this Section.
- Music performance license agreements (See also, sample agreement under Section V above.)
 - 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.

- 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:
 - 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.
 - 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.
 - 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.
 - (1) Sample Software License Agreement (Exhibit 15)
- Intellectual Property Agreements
 - 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.
 - 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 (Exhibit 16)
 - Copyrightable Works Disclosure Form (Exhibit 17)
 - IP Agreement (Exhibit 18)

- Employee Work for Hire Agreement (Exhibit 19)
 - Copyright License Agreement (Exhibit 20)
 - Partial Assignment of Copyright Ownership Agreement (Exhibit 21)
 - Joint Ownership of Copyright Agreement (Exhibit 22)
- 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.
 - Sample Intellectual Property/Research Agreement (Exhibit 23)
 - Source: TBR Policy 5:01:06:00
- IX. Contracts for Deposit and Investment of Funds
 - Scope
 - This guideline shall be used for the deposit and investment of all funds, regardless of source, which are received by a TBR institution. Where the term "bank" or "banking institution" is used in this guideline, it refers to all financial institutions including savings and loan associations.
 - General Rules
 - 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 College of Applied Technology is authorized to have one imprest checking account. No additional accounts of this nature will be approved for opening or maintained by any Institution unless specifically approved by the Chancellor or designee.
 - Petty Cash Funds
 - 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)
 - 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.
- Complimentary non-interest bearing accounts are prohibited and will not be approved.
- 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 Colleges of Applied Technology or designee and the Chancellor of the TBR or designee, as appropriate.
- All documents required by a banking institution shall be obtained, reviewed, and negotiated to ensure that the documentation complies with TBR policy.
- Essential Contents of the Agreement
 - The Sample Banking Agreement at the end of this section should form the basis of the agreement; however, a few additional elements are described below:
 - 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.
 - 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.
 - 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:
 - The provision of standard services for processing checks and deposits in accounts;
 - The provision of the required collateral security for all deposits;

- The provision of a branch office of the bank within a specified distance from the campus;
- 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;
- The provision of investment services;
- The provision of account reconciliation services;
- The provision related to Automatic Clearing House debits and credits including direct deposit; and
- The provision of safe deposit box services.
 - Any additional services provided must also conform to TBR and state laws regulating public funds.
- 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.
- 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:
 - P. An opinion of legal counsel that the association has the authority to collateralize public funds;
 - Q. A resolution adopted by the board of directors authorizing such investments; and
 - R. Appropriate written instructions for the transfer of funds.
 - Sample Banking Agreement (Exhibit 24)
 - Source and Authority: T.C.A. Chapter 4 of Title 9; TBR Policy 4:01:01:10.
- Non-credit Instruction Agreement
 - 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.
 - General Rules

- The institution is responsible for the administration of fees, charges, and refunds in accordance with TBR Guideline B-060.
- 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:
 - 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.
 - The minimum and maximum number of participants and the program fee that will be invoiced to company.
 - 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.
 - 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 (Exhibit 25)
 - Sample Non-Credit Instruction Agreement above \$50,000 (Exhibit 26)
- Contract for Workshops/Seminars (Up to \$5,000.00)
 - Workshop/Seminar Participation Agreement
 - 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).
 - 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.

- 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 (Exhibit 5)
 - Sample Workshop/Seminar Participation Agreement (Exhibit 6)
- 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 XII does not require System Office approval. Therefore, when negotiating with the notwithstanding clause, your file should show:
 - Documentation of attempts to negotiate out impermissible language;
 - The need for the item or service;
 - The fact that vendor is the sole source (or that all vendors require the limitation language); and
 - 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.
 - 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:
 - A standard form contract or license;
 - Offered to the consumer on a 'take it or leave it' basis;
 - The consumer has no realistic opportunity to negotiate different terms; and
 - 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:
 - Documentation of attempt to negotiate needed changes in the contract and the vendor's refusal to agree to any changes;
 - The need for the item or service(s);
 - The fact that the vendor is the sole source (or that all vendors require the impermissible language); and
 - 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:
 - For contracts of adhesion up to \$5,000 not requiring signature -procedures, documentation and reporting required under this Section XII shall not apply.
 - For such contracts or licenses costing more than \$5,000 but less than \$25,000 - Steps a. through d. 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 System Office approval is not required.

- For such contracts or licenses costing \$25,000 or more - Steps a. through b. 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 XII, 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.

Exhibits

-  Exhibit 1 - Attestation Form (docx /27.36 KB)
-  Exhibit 2A - Sample Clinical Agreement (pdf /133.17 KB)
-  Exhibit 2B - Sample Clinical Agreement with Attachment (pdf /215.83 KB)
-  Exhibit 3 - Sample Personal/Professional/Consultant Service Contract (pdf /64.93 KB)
-  Exhibit 4 - Sample Pro Forma Contract (docx /38.9 KB)
-  Exhibit 5 - Contract for Workshop/Seminar (pdf /47.46 KB)
-  Exhibit 6 - Workshop/Seminar Participation Agreement (pdf /40.19 KB)
-  Exhibit 7 - Sample Dual Services Agreement (docx /40.31 KB)
-  Exhibit 8 - Sample Use of Campus Facilities Agreement (Long & Short Versions (docx /472.26 KB)
-  Exhibit 9 - Mutual Use Agreement (docx /26.49 KB)
-  Exhibit 10 - Transient Use Agreement (docx /24.45 KB)
-  Exhibit 11 - Tenant Use Agreement (docx /24.7 KB)

-
-  Exhibit 12 - Mutual or Transient Use Terms & Conditions (pdf /39.12 KB)
 -  Exhibit 13 - Tenant Use - Terms and Conditions (pdf /41.27 KB)
 -  Exhibit 14 - Instructions for Use Agreements (pdf /33.67 KB)
 -  Exhibit 15 - Sample Software License Agreement (docx /34.65 KB)
 -  Exhibit 16 - Invention Disclosure Form (docx /18.85 KB)
 -  Exhibit 17 - Copyrightable Works Disclosure Form (docx /17.98 KB)
 -  Exhibit 18 - intellectual Property Agreement (pdf /7.47 KB)
 -  Exhibit 19 - Employee Work for Hire Agreement (docx /21.3 KB)
 -  Exhibit 20 - Copyright License Agreement (docx /21.62 KB)
 -  Exhibit 21 - Partial Assignment of Copyright Ownership Agreement (docx /21.61 KB)
 -  Exhibit 22 - Joint Ownership of Copyright Agreement (docx /21.09 KB)
-
-  Exhibit 23 - Sample Intellectual Property/Research Agreement (docx /35.58 KB)
 -  Exhibit 24 - Sample Banking Agreement (pdf /18.1 KB)
 -  Exhibit 25 - Sample Non-Credit Instruction Agreement up to \$50,000 (docx /16.36 KB)
 -  Exhibit 26 - Sample Non-Credit Instruction Agreement above \$50,000 (docx /42.18 KB)

Sources

November 12, 1985, Presidents' Meeting; August 15, 1989, Presidents' Meeting; November 8, 1995, Presidents' Meeting; May 14, 1996 Presidents' Meeting; November 12, 1996, Presidents' Meeting; August 5, 1997 Presidents' Meeting, November 5, 1997 Presidents' Meeting; February 17, 1998 Presidents' Meeting & March 27, 1998 Board Meeting; November 4, 1998 Presidents' Meeting, November 7, 2001 Presidents Meeting. August 16, 2005 Presidents' Meeting, August 16, 2006 Presidents' Meeting; May 15, 2007 Presidents' Meeting, February 12, 2008 Presidents' Meeting; Presidents Meeting, November 5, 2008; Presidents Meeting, February 17, 2009; Presidents Meeting, August 11, 2009; Presidents Meeting August 17, 2010. Revisions to exhibits: 2/14 & 7/14.



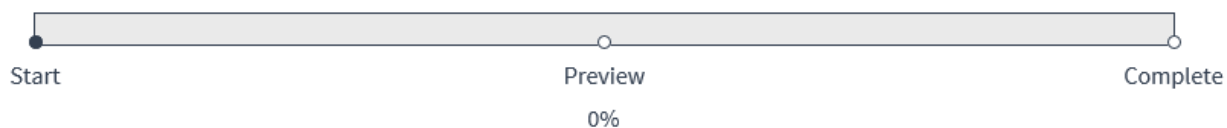
ATTACHMENT 15

(Compliance Survey/Checklist)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

Title IX Annual Report Form



Must be completed by campus Title IX Coordinator. Due Friday, September 19, 2014.

Date Submitted *

Month Day Year 

Type of Survey *

- ☐ Initial
☐ Annual
☐ Other

Name of Institution *

Name of President/Director *

Name of Title IX Coordinator *

Does your institution have a written policy stating that services will be provided to all persons without regard to gender? *

☐ yes ☐ no

Are posters containing Title IX information prominently displayed within the facility? *

☐ yes ☐ no

Do the Title IX posters include the Coordinator's name, title, and telephone number? *

☐ yes ☐ no

Is your institution in compliance with applicable TBR Policies and Guideline G-070: Disposal of Records? *

☐ yes ☐ no

Is Title IX information disseminated to your beneficiaries (i.e. employees, applicants, students, etc.)? *

☐ yes ☐ no

If yes, describe how all beneficiaries are informed.

How are beneficiaries made aware of their rights under Title IX, including the right to file a complaint? *

Are new employees informed about their specific responsibilities to recipients of services under Title IX? *

☐ yes ☐ no

Are all employees periodically trained regarding information detailing their Title IX responsibilities? *

☐ yes ☐ no

By whom and how is Title IX employee training conducted? *

Do all contracts to provide services contain a Title IX statement of compliance as required by TBR Guideline G-030: "Contracts and Agreements"? *

☐ yes ☐ no

Are all physical areas (residence halls, dining areas, restrooms, etc.) provided and used without regard to gender? *

☐ yes ☐ no

Does your institution routinely contact the TBR Office of General Counsel for legal advice during the investigation? *

☐ yes ☐ no

(or campus legal counsel, if applicable) This is required by TBR Guideline P-080.

Title IX Compliance Status

	Browse...	Upload
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If you are unable to answer "yes" to each Title IX compliance area listed, you are required to submit necessary documentation to state reason(s) for non-compliance and measures to be taken. Please attach a MS Word document to this form here.

Complaints: If your institution received NO Title IX complaints during fiscal year 2013-2014, check here.

☐ No Complaints Filed

Complaints filed for 2013-2014

	Browse...	Upload
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Please submit a MS Excel Spreadsheet if your institution received any Title IX complaints (discrimination or harassment based on gender) during the fiscal year 2013-2014. Fields in the spreadsheet should include: 1) Date complaint was reported; 2) gender of complaint; 3) basis for the charge (discrimination, harassment, and/or retaliation; 4) a brief summary of the complaint - OMIT ALL NAMES (in 30 words or less); 5) the findings/conclusion of the investigation; and 6) the current status of the complaint (e.g. closed, pending, etc.).

Declaration of Respondent & Administrative Head *

	Browse...	Upload
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Please attach a copy of the signature page to this form. This was supplied to all Title IX Coordinators in an email from the Assistant Vice Chancellor for Student Affairs, Dr. Heidi Leming.



ATTACHMENT 16

(Title IX Workload and Performance Data/Complaints)

Tennessee Board of Regents

System Wide Title IX Implementation Plan (FY 13-14)

TBR TITLE IX COMPLAINTS FY 13-14

Austin Peay State University

Date Complaint was Reported	Gender of Complainant	Basis for the Charge	Brief Summary	Findings/Conclusions	Current Status
9/10/2013	Female	Discrimination and Harassment	Student charged that her Spanish Professor discriminated against her because of her pregnancy. Student alleged that she told the Professor that she was pregnant and that was the reason she was late to class on several occasions. The student arrived on the day of the final exam 30 minutes late and the professor would not let her take the exam. The Professor denied that the student told her that she was pregnant. The student did not contact the professor to take the exam at a later date.	No violation of policy.	Closed
4/22/2014	Female	Harassment	Student alleged that a male student kissed her in the elevator in the Trahern Building. She said she told him no and tried to pull away. He continued to kiss her neck and put his hands down her pants. She knew the student and they had dated in the past. However, in February, she told him that she did not want to see him anymore.	Violation of policy and Student Code of Conduct and the student was charged through the student disciplinary process.	Closed
6/18/2014	Female	Harassment	Report from University officials that while on a study abroad trip a male student had sexually harassed two female students. Female student alleged that he tried to kiss her one night; she told him to stop and he did. The next week, he kissed her again, she pushed him off and he stopped. He tried to kiss her again on another occasion and he tried to put his hands down her pants. The other female student stated that the same male student also tried to kiss her one night while they were on this study abroad trip. She stated that prior to the trip, she had told him that she wasn't interested in him other than as a friend. Male student stated that he did attempt to kiss the female students but stated that he stopped when they told him to do so.	Violation of policy and the student code of conduct. He was to issue a written apology to the female students and complete sexual harassment training.	Closed

East Tennessee State University

Date Reported	Gender of Complaint	Basis for Charge	Brief Summary of Complaint	Findings/Conclusion	Current Status of Complaint
9/24/2013	Female	Female student alleged that male classmate instigated sexual acts with her after she was intoxicated and unable to consent.	On August 1, 2013, female student texted her male classmate and asked if he would be interested in having sex with no strings attached. He turned her down, but later met up at her apartment where they both were drinking. It was only after she was drunk that he	The preponderance of the statements and the totality of the evidence demonstrate that more likely than not sexual misconduct did occur.	The male student accepted disciplinary sanctions through a settlement and disposition of the case on December 9, 2013.
11/5/2013	Transgender	Transgender student who identifies as female complained that she suffered gender identity discrimination by a resident director and public safety officer.	Student claimed resident director and public safety officer were not willing to use the correct gender pronouns when referring to her. She claimed also that due to the gender identity discrimination, she then suffered a panic attack and that the entire incident has resulted in a significant toll	While the student prefers female pronouns, the public safety officer was following protocol by referring to her as a 'he' according to the student's drivers license status. No evidence existed to confirm that the student was discriminated against in reference to the correct pronoun usage during the incident.	Case closed.

Middle Tennessee State University

Date Reported	Gender	Basis for Charge	Summary	Findings/Conclusion	Status of Complaint
8/9/2013	Female	Sexual Harassment	Allegation of Unbuttoned Pants and Hand Inside	Not found in violation	Closed (12-16-13)
9/5/2013	Female	Sexual Harassment	Allegation of Unwanted Kissing	Found in violation/Reprimand/Counseling/No Contact Order	Closed (09-23-13)
9/13/2013	Female	Sexual Harassment	Allegation of Unwanted Kissing/Touching/Inappropriate Comments	Not found in violation	Closed (10-30-13)
10/8/2013	Female	Sexual Harassment	Allegation of Unwanted Kissing/Fondling	Not found in violation	Closed (11-19-13)
10/24/2013	Female	Rape		Found in violation/Appealed and Denied/TUAPA Hearing/Found Not in Violation	Closed (03-31-14)
11/18/2013	Male	Rape		Not found in violation	Closed (12-18-13)
11/25/2013	Female	Sexual Harassment	Allegation of Unwanted Sexual Advances/Touching/Fondling	Not found in violation	Closed (12-13-13)
2/14/2014	Females	Sexual Harassment	Allegation of Comments of a Sexual Nature	Not found in violation	Closed (06-27-14)
3/10/2014	Female	Rape		Found in violation/Suspension/Educational Requirement	Closed (04-11-14)
3/17/2014	Male	Sexual Harassment	Alleged Respondent was not a Student	Letter Sent to Alleged Respondent Informing of Guest Behavior	No Investigation
3/24/2014	N/A	Sexual Harassment	Allegation of Inappropriate Comments of a Sexual Nature/Unwanted Comments	Found in violation (Removed from teaching/advising/stipend/counseling requirement)	Closed (04-28-14)
4/1/2014	Female	Sexual Harassment	Allegation of Inappropriate Comments of a Sexual Nature	Found in violation (Investigated by external agent)	Closed (06-20-14)
4/23/2014	Male	Sexual Harassment	Allegation of Inappropriate Comments/Behavior of a Sexual Nature	Not found in violation	Closed (07-09-14)
4/24/2014	N/A	Sexual Harassment	Allegations of Inappropriate Comments of a Sexual Nature	Informal Resolution (Restriction from Lab)	Closed (06-05-14)
4/24/2014	N/A	Sexual Harassment	Allegations of Inappropriate Comments of a Sexual Nature	Informal Resolution	Closed (06-05-14)
4/25/2014	Male	Sexual harassment	Allegations of Inappropriate Comments about Sexual Orientation	Informal Resolution (Student Housing Moved)	Closed (06-05-14)
4/25/2014	Female	Sexual Harassment	Allegations of Inappropriate Comments of a Sexual Nature/Stalking	Not Found in Violation (No Contact Order Issued)	Closed (06-30-14)
5/2/2014	Male	Sexual Harassment	Allegation of Inappropriate Behavior of a Sexual Nature	Informal Resolution	Closed (05-16-14)
5/2/2014	Male	Sexual Harassment	Allegation of Inappropriate Comments/Behavior of a Sexual Nature	Informal Resolution	Closed (05-16-14)
5/7/2014	N/A	Sexual Assault	Notice Sent to Student through Nose Practitioner (Encouraged to Come Forward)	Student would not come forward	No Investigation
6/10/2014	Male	Sexual Harassment	Allegation of Inappropriate Behavior of Sexual Nature	Found in Violation/Faculty Member on Leave Pending Further Investigation	Pending
6/13/2014	Male	Sexual Harassment	Allegation of Inappropriate Comments by Camper to Another Camper	Not sufficient information	Closed (07-18-14)
6/23/2014	N/A	Sexual Assault	Repeated Attempts Made to Contact Alleged Victim	Student would not come forward	No Investigation
7/7/2014	Female	Sexual Harassment	Allegation of Indecent Exposure by Unknown Person	Not sufficient information	Closed (08-11-14)
07/24/14	Anonymous	Gender Discrimination	Allegation of Gender Discrimination in Search Process/Hiring Decision	Found in violation/Appealed and Denied (Removed from position)	Closed (09-02-14)

Tennessee State University

Date	Gender of Complainant	Basis for the Charge	Summary of Complaint	Findings	Status
9/9/2013	male	harassment	student alleged professor used inappropriate language regarding sexual orientation in class.	no findings, reached informal resolution	closed
9/11/2013	male	sexual assault	student alleged sexual assault by non student on campus	insufficient evidence	closed
9/23/2013	female	discrimination	pregnant student alleged professor refused to accommodate her pregnancy	informal resolution	closed
9/25/2013	female	sexual assault	student alleged she was sexually assaulted by a male she was involved with	student refused cooperation	closed
10/2/2013	male	harassment	employee witnessed making inappropriate comments about a student's attire	informal resolution	closed
10/8/2013	female	harassment	student worker alleged she was harassed by male employee	informal resolution	closed
10/29/2013	female	harassment	student reported a male employee was trying to engage in sexual relationships with female residents	investigation revealed evidence of inappropriateness on the part of the employee; employee resigned	closed
10/29/2013	female	harassment/retaliation	student alleged that male professor made negative statements about women in class and when she complained he retaliated against her	investigation revealed evidence of inappropriateness on the part of the professor; professor disciplined	closed
10/29/2013	female	harassment	student alleged her coach harassed her by using inappropriate language	informal resolution	closed
11/10/2013	female	sexual assault	student alleged she was sexually assaulted by a non-student on campus	assailant arrested, student provided with resources	closed
12/5/2013	female	harassment	student alleged her professor used inappropriate language in class	investigation ongoing	open
2/6/2014	anonymous	harassment	student alleged through student evaluation that professor used inappropriate language about sexual orientation in class	insufficient evidence	closed
4/30/2014	female	harassment	student alleged her professor attempted to date her during course	informal resolution	closed
5/19/2014	female	sexual assault	student alleged she was sexually assaulted by male student after consuming alcohol	investigation revealed incapacitation on female student's part but no force or knowledge of incapacitation on male student's part	closed

Tennessee Tech University

Date Complaint Was Reported	Gender of Complainant	Basis for the Charge (discrimination, harassment, and/or retaliation)	Brief Summary of the Complaint (30 words or less; OMIT ALL NAMES)	Findings/Conclusion of the Investigation	Current Status of the Complaint (e.g., closed, pending, etc.)
7/31/2013	1 female	Harassment	Complainant alleged she was sexually assaulted (sexual battery, not rape) in Spring 2013 by a fellow student in the latter's residence hall room.	Complainant's allegation could not be corroborated.	Closed
1/17/2014	2 females	Harassment	Complainants alleged apartment roommate wrote provocative comments on foreign chat site, solicited sex, placed his arm around one's shoulders, and made a provocative claim during a "truth or dare" game.	Preponderance of evidence indicated complaint did not rise to level of P-080 violation.	Closed
2/4/2014	1 female, 1 male	Harassment	Complainants, who were dating, alleged her classmate made unwanted amorous remarks to her, made sarcastic comments and threats to him, and stalked her on and off campus.	Preponderance of evidence indicated complaint did not rise to level of P-080 violation or legal definition of stalking.	Closed
2/5/2014	1 male	Harassment	Complainant alleged that a faculty member's comments about women were harassment.	Complaint did rise to level of P-080 violation and was administratively dismissed.	Closed
2/17/2014	1 male	Harassment	Complainant alleged classmate sent text messages of a sexual nature, thus making him feel uncomfortable.	Preponderance of evidence indicated respondent had reason to believe complainant consented via responses. Situation did not rise to level of P-080 violation.	Closed
4/1/2014	1 female	Harassment	Complainant alleged to TA that a classmate was repeatedly staying in and leaving class at same time she did, making her feel uncomfortable.	Complainant did not respond to investigator's communications, which disabled further investigation.	Closed
4/2/2014	2 females	Harassment	Complainants alleged to professors that a classmate found ways to be near them and once grabbed one complainant's waist. Complainants didn't feel at risk and said classmate lacked social skills.	Complainants did not respond to investigator's e-mails, which disabled further investigation.	Closed
4/23/2014	1 female	Harassment	Complainant alleged campus police officer investigating that complaint was stalking her in parking lot.	Verified officer was monitoring lot in response to a call. Complaint did not rise to level of P-080 violation.	Closed

The University of Memphis

Date complaint Reported	Gender of Complainant	Basis for the Charge	Brief Summary of Complaint	Findings/Conclusion of Investigation	Current Status of Complaint
09/2013	Female	Sexual Assault	Sexual assault in dorm room	Investigator found sufficient evidence to charge respondent with sexual misconduct. Respondent was suspended from the University.	Case closed
09/2013	Female	Sexual Assault	Sexual assault in dorm room	Investigator found insufficient evidence to charge respondent with violation of the Code related to sexual misconduct	Case closed
10/2013	Female	Sexual Assault	Sexual assault-complainant drinking at party passed out in boyfriend's bed woke up w/respondent on top of her	Investigator found sufficient evidence to charge respondent with sexual misconduct. Respondent was suspended from the University.	Case closed
01/2014	Female	Sexual Assault	Sexual assault in dorm by respondent	Investigator found insufficient evidence to charge respondent with violation of the Code related to sexual misconduct. Investigator could not conclude allegations of a sexual assault or sexual misconduct under Title IX.	Case closed
04/2014	Female	Sexual Misconduct	Complainant alleged respondent had nude photos and video of her and was sharing them with other students		
04/2014	Female	Inappropriate Behavior and/or misconduct	Complainant alleged respondent rude to students; often use female students for simple clerical tasks; respondent called student(s) to office without a reason.	Inconclusive and does not support violations of Title IX	Case closed
05/2014	Female	Inappropriate Behavior and/or misconduct	Complainant alleged respondent invited her to office for unknown reason; respondent locked door which made complainant very uncomfortable.	Inconclusive and does not support violations of Title IX	Case closed

Columbia State Community College

Date Reported	Gender of Complainant	Basis for Charge	Summary of Complaint	Findings	Status
2/5/2014	Female	Discrimination based on Gender Identity	Allegation that adjunct instructor talked about her sexuality and hurt her feelings.	Investigation under TBR Guideline P-080: The preponderance of evidence gathered and analyzed did not support a finding of discrimination based on sexual orientation.	Closed 3/24/2014
5/23/2014	Female	Discrimination	Allegation by mother of prospective student that her daughter under age 18 was denied dual enrollment class at the college because her mother has a same-sex partner.	Investigation under TBR Guideline P-080: No evidence that daughter of complainant was denied enrollment as alleged, but evidence that she did not meet minimum standards of admission to the program.	Closed 6/26/2014

Motlow State Community College

Date Complaint Was Reported	Gender of Complainant	Basis for the Charge	Summary of Complaint	Findings or Conclusions	Current Status of Complaint
9/16/2013	Female	Harassment	Two female students complained that their Male coach had key access to their apartment and would do random checks creating an uncomfortable and offensive living environment.	Coach was disciplined by AVP for Student Affairs and his key to the female apartments was surrendered.	Closed
9/20/2013	Anonymous	Discrimination	Alleged that the College does not effectively accommodate the interests and abilities of members of both sexes to the extent necessary to provide equal athletic opportunity.	OCR investigation still on-going	Pending
11/1/2013	Male	Harassment	Female student making suggestive comments to Instructor during class and through email.	Faculty member was interviewed and after HR Director contacted student to schedule an interview, she failed to show up for interview, stopped responding to calls and quit coming class.	Closed
11/4/2013	Female	Harassment	Male instructor allegedly harassed a female student, or made her feel uncomfortable.	Both student and Instructor were interviewed and no finding of harassment was discovered.	Closed Informally resolved
1/23/2014	Female	Harassment	An inappropriate comment was made by an Instructor to a student. A passer-by, not the student, reported the incident.	Both student and Instructor were interviewed. Student asked that the matter be dropped; however, Instructor was disciplined by the VP for Academic Affairs. No further action was taken.	Closed
4/4/2014	Female	Harassment	A contract custodian alleged harassment and hostile working environment in the Facilities department.	A full investigation was conducted resulting in the termination of two supervisors, and a corrective action placed in the personnel files of three employees.	Closed

Northeast State Community College

Date of Complaint	Gender of complaint	Basis for the charge	Summary	Findings/Conclusion	Current Status
10/24/2013	Female	Harassment	Report of inappropriate, sexual-oriented behavior by a theatre instructor during classroom exercise	Adjunct instructor will not return to class	Closed
11/21/2013	Unknown	Discrimination	Math instructor made a correlation (analogy) that was considered offensive	Instructor received letter from President and one-on-one discussions	Closed

Pellissippi State Community College

DATE REPORTED	GENDER OF COMPLAINANT(S)	BASIS OF CHARGE	SUMMARY OF COMPLAINT	FINDINGS AND CONCLUSIONS	STATUS
Jun-13	Female	Harassment/ Discrimination	Student claimed harassment/ discrimination by one of the leaders on TnCIS trip; investigation showed student was difficult and did not follow rules.	No findings.	Closed
Nov-13	Females	Harassment/ Discrimination	Three female students claimed hostile environment in class for females/mothers.	Did not substantiate females were treated differently; however, comments were made about women/mothers that could have been considered insulting. Recommendations made for sensitivity training and on-going supervision by program coordinator.	Closed
Nov-13	Females	Harassment	Three female students claimed faculty member flirted with them, asked them out, and showed up at one student's place of work.	Findings. Tenure Track Contract was not renewed.	Closed
Dec-13	Third Party complaint (male student reported this to another faculty member).	Harassment/ Discrimination	Sexual harassment/discrimination against women in classroom.	No findings.	Closed

Roane State Community College

Gender of Complainant(s)	Basis of Charge	Summary of Complaint	Findings/Conclusions	Status
Male	Harassment	Male student and temporary worker alleged female student was harassing and stalking him.	It was concluded that the female student was not guilty of any harassment or stalking behavior. Students were engaged in what appears to be a consensual relationship. Male student sent apology to female student. Additionally, as a result of his actions the male student was terminated from his temporary position. Both students agreed to move on and complete their educational goals.	Closed
Female	Harrassment	Faculty member alleged that one of his female students was harassing/stalking him.	Upon interview and investigation, the Dean of Students suspended student for one year as she is a possible potential threat to the campus and instructor.	Closed

Southwest State Community College

Complaint Date	Gender of Complainant	Basis of Charge	Summary of Complainant	Status
3/11/2014	Female	Unprofessional Behavior	Female student filed a complaint against a male Security Officer alleging unprofessional behavior. Investigation conducted and there was no violation of policies found.	Closed
3/18/2014	Female	Harassment	Female student alleges she was being harassed by a male employee because the two of them were involved in a relationship. Investigation conducted and there was no violation of policies found.	Closed
6/18/2014	Female	Inappropriate Conduct	Female student filed complaint against male employee alleging inappropriate comments made to her Facebook "Inbox." There was sufficient evidence to establish repeated violations of the Code of Conduct. Employee terminated.	Closed

Volunteer State Community College

Date Reported	Gender of Complainant(s)	Basis for Charge	Summary	Findings/Conclusion	Current Status
9/12/2013	Female	Harassment	Female employee complained that male student made inappropriate physical contact with her by repeatedly embracing her despite the fact she asked him to stop.	Respondent was advised that his behavior had the potential to violate College policy. Both parties agreed to informal resolution and Respondent was counseled on appropriate workplace conduct within the context of College policy, and he agreed to refrain from physical contact with coworkers in the future.	Closed
11/25/2013	Female	Harassment	Two female students complained that a male student separately offered each of them money in exchange for sexual favors.	The evidence supported a finding that events occurred substantially as reported by Complainants and that Respondent acted in a disturbing fashion in violation of College policy. Respondent was placed on probation for one (1) year.	Closed
3/10/2014	Female	Discrimination	Female student complained that female instructor's grading policy was discriminatory toward women.	The available facts did not support a conclusion that the Respondent's grading is inherently discriminatory toward women in violation of College policy. No action was taken.	Closed
4/15/2014	Female	Harassment	Female student complained that male instructor had an inappropriate relationship with another female student.	The available evidence did not support a cause to investigate Respondent further or a conclusion that he engaged in an inappropriate relationship with student(s) or that he otherwise acted in a manner in violation of College policy. No action was taken.	Closed
4/17/2014	Female	Harassment	Female student complained male instructor made unwelcome physical contact by holding her hand and grabbing her breasts.	The available evidence supported the finding, by at least a preponderance of the evidence, that the events occurred substantially as alleged by Complainant. Respondent was placed on paid administrative leave pending termination of his employment.	Pending

Walters State Community College

Date Reported	Gender of Complainant	Basis for Charge	Summary of Complaint	Findings/Conclusion	Current Status
1/27/2014	female	harassment and retaliation	Complainant reported unprofessional behavior by the respondent, which respondent admitted to. After the report, complainant felt she was being treated unfairly by the respondent.	A P-080 violations had occurred. Complainant was directed to retake Title IX training, and a letter of warning was placed in her personnel file.	closed
4/21/2014	female	harassment	Student's mother complained of sexually explicit emails and texts between her daughter and one of her daughter's instructors. Student claimed instructor began the interactions and persisted, even though she asked him to stop.	Relationship was consensual; therefore, no harassment occurred. However, instructor resigned and investigator recommended that he not ever be rehired. Student was suspended for one year for disorderly conduct, failure to cooperate with institutional officials, and providing false information.	closed
4/25/2014	male	harassment	Instructor in case mentioned above claims that student initiated emails and texts and would not stop despite his requests to do so.	Relationship was consensual; therefore, no harassment occurred. However, instructor resigned and investigator recommended that he not ever be rehired. Student was suspended for one year for disorderly conduct, failure to cooperate with institutional officials, and providing false information.	closed
5/2/2014	female	harassment	Complainant reported feeling uncomfortable when male faculty member massaged her shoulders while standing behind her talking to her and others at a table in the café, and when the same employee brushed by her in the kitchen. Respondent denied the accusation.	Due to differing responses given by witnesses in the café, it was unclear if a violation occurred or not; however, respondent was instructed to retake the Title IX training and cautioned against touching others.	closed

TCAT-Dickson

Date complaint reported	Gender of Complaint	Basis for the Charge	Brief Summary	Findings/Conclusions	Current Status
7.6.13	Female	Harassment	Female alleged male student in another program made sexually suggestive comment to her and touched her stomach.	Male denied the allegations. Lack of evidence/eye witnesses to support allegation/denial. Students agreed to have no further contact with each other and considered the incident settled.	Closed

TCAT-Jacksboro

Date Complaint Filed	Gender of Complaint	Basis for the Charge	Brief Summary of Complaint	Findings/Conclusions of the Investigation	Current Status
10/16/2013	Female	Harassment	Student reported that another student in her class made sexual comments regarding her to another student.	Student accused of making comments admitted he had made the comments. He accepted his guilt and participated in Sexual Awareness Training provided by the school. He was given a formal reprimand.	Closed

TCAT- Murfreesboro

Date of Complaint	Gender	Basis of Charge	Summary	Findings	Status
24-Feb-14	Female	Harassment	Student felt harassed by instructor and students.	Poor classroom management	Closed

TCAT-Oneida/Huntsville

Date Reported	Gender of Complaint	Basis for the Charge	Complaint Summary	Findings/Conclusion	Current Status
2/26/2014	Female	Harassment	Complainant alleged fellow classmate made remark of a sexual nature to her during break. Student found the remark to be sexually offensive.	Respondent admitted to statement and was found in violation of P-080 . Respondent was provided P-080 policy and advised of consequences for future offenses.	Closed

TCAT-Whiteville

Date of Complaint	Gender of Complainant	Basis of Charge	Summary of Complaint	Findings/Conclusions	Status
October 10, 2013	Female	Harassment	A P-080 investigation ensued based on an allegation from a female student that she was sexually groped by the school custodian after school in the classroom.	After an internal investigation, there was sufficient evidence, including the respondent's admission, to substantiate the complainant's complaint. Upon consultation with TBR legal, the custodian's employment was terminated.	Closed