1.02.03.10 Conflict of Interest

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Policy/Guideline Area

Governance, Organization, and General Policies

Applicable Division

TCATs, Community Colleges, System Office

Purpose

All employees of the TBR and its constituent Institutions serve the interests of the State of Tennessee and its citizens, and have a duty to avoid activities and situations that, either actually or potentially, put personal interests before the professional obligations that they owe to the State and its citizens. This policy is intended to establish standards of integrity and objectivity that should guide the actions of all employees of the Tennessee Board of Regents System.

Definitions

- Conflict of interest - occurs when the personal interests, financial or otherwise, of a person who owes a duty to the Tennessee Board of Regents and its constituent Institutions actually or potentially diverge with the person's professional obligations to and the best interests of the TBR and its Institutions.
- Conflict of commitment - occurs when the personal or other non-work related activities of an employee of the TBR and its constituent Institutions impair the ability of that employee to meet their commitments of time and energy to the TBR and its Institutions.
- Conflicting Party – A person or entity that has or is seeking to obtain contractual or other business or financial relations with the institution in which the individual is

employed or has interests that may be substantially affected by the performance or nonperformance of the employee.

- Immediate family – for purposes of this policy means spouse or minor child living with the employee.

Policy/Guideline

I. Applicability

A. This policy shall apply to all persons employed, either as full-time, part-time or temporary employees, by the Tennessee Board of Regents and its constituent Institutions.

II. General Principles

A. Conflict of Commitment. Employees of the Tennessee Board of Regents should avoid external commitments that significantly interfere with the employee's duties to the TBR and its constituent Institutions, Disclosures of outside employment shall be made as required under Policy 5.01.05.00 Outside Employment and Extra Compensation for Additional Assignments and evaluated as indicated in that policy.

B. Conflict of Interest. Employees should avoid situations where the self-interests of the employee diverge from the best interests of the TBR and its Institutions.

C. Management of Conflict of Interest. The mere existence of either a potential or actual conflict of interest does not mean that such conflict must necessarily be eliminated.

1. Where the potential detriment to the TBR and its Institutions is at most minor and inconsequential, and the conflict does not indicate violation of Federal or State law, regulation, or policy, those persons charged with evaluating disclosures should allow the activity to proceed without interference after documenting the evaluation process.

2. For those situations which do not implicate Federal or State law, regulation or policy, the standard for determination of whether a conflict of interest should be managed, reduced, or eliminated is whether that conflict would appear to a reasonable person to call into question the integrity or judgment of the affected employee.

III. Situations and Activities Creating a Conflict of Interest

A. In the following situations and activities, there is at least the appearance, and possibly the actuality, of an employee allowing his or her personal interests, and not the best interests of the TBR and its constituent Institutions, to affect that employee's judgments. This list is illustrative, and not exhaustive.

1. Self-dealing

a. Situations in which an employee can appear to influence or actually influence an Institutionally-related decision from which that person or a member of that person's immediate family stands to realize a personal financial benefit is self- dealing, and a conflict of interest.

b. Examples of self-dealing activities include the following.

(1) Purchase of State-owned property by an employee absent fair and open bidding.

(2) Institutional purchases from businesses in which an employee or family member has a financial interest.

(3) Use of Educational Materials from Which a Faculty Member Derives Financial Benefit in That Faculty Member's Teaching Activities.

(a) Any faculty member who wishes to use in his or her teaching activities educational materials (e.g. a textbook) which he or she has authored, or in which he or she otherwise stands to benefit financially from such use, a conflict of interest disclosure shall be made per Section IV of this policy.

(b) Whether the use of such materials shall be permitted shall be evaluated either under the terms of Institutional policy, or in the absence of such policy, by the Review Committee established under Section VIII of policy.

(c) Such evaluation shall include consideration of suitable substitute materials and ensure that the needs of students are best served by use of the materials in which the faculty member has an interest.

(4) Acceptance of Gifts, Gratuities, or Favors

(a) Gifts. No employee shall knowingly solicit or accept, directly, or indirectly, on behalf of himself or herself or any member of the employee's household, for personal use or consumption any gift including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, from any person or entity that:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with the institution in which the individual is employed; or

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee.

(5) Exceptions

(a) The prohibition on accepting gifts in Section (4)(a) above, does not apply to:

(i) A gift given by a member of the employee's immediate family, or by an individual, if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee;

(ii) Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(iii) Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business, including items distributed at tradeshows and professional meetings where vendors display and promote their services and products;

(iv) Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or other event, including tradeshows and professional meetings, if the value of such items does not exceed fifty dollars ($50.00) per occasion; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in Section III.A.1.b.(4).

(v) There may be circumstances where refusal or reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the institution. In such circumstances, the employee is to use his or her best judgment, and disclose the gift including a description, estimated value, the person or entity providing the gift, and any explanation necessary within fourteen (14) days to their immediate supervisor;

(vi) Food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings;

(vii) Participation in institution or foundation fundraising and public relations activities, i.e. golf tournaments and banquets, for which conflicting parties provide sponsorships; and

(viii) Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any conflicting party.

(b) Inappropriate use of students or support staff

(i) Employees shall ensure that the activities of students or support staff are not exploited for the benefit of any external activity of the employee.

(ii) Prior to assigning any such non-institutionally related task that is more than incidental or de minimus in nature to a student or member of the support staff, an employee shall disclose such proposed activities and obtain approval from the institution's director of human resources or chief academic officer, as applicable.

(c) Inappropriate use of State owned resources

(i) Employees may not make significant use of State owned facilities, equipment, materials or other resources, not otherwise available to the public, in the course of activities which are not related to the Institution and which are intended for personal benefit, without prior disclosure and approval of the institution's chief financial officer.

(d) Failure to disclose intellectual property

(i) TBR Policy 5.01.06.00 Intellectual Property governs the rights and responsibilities which persons affiliated with the TBR and its Institutions have regarding intellectual property developed during the term of their affiliation with the TBR.

(ii) Among the responsibilities enumerated in the policy is that of disclosure of inventions and those copyrightable works which may be reasonably expected to have commercial value which they have jointly or solely developed or created during their affiliation with the TBR and its Institutions.

IV. General Disclosure Requirements

A. Persons to whom this policy applies who believe that a conflict of interest may exist either personally or with respect to another person covered by this policy shall make a written disclosure of the facts and circumstances surrounding the situation.

B. No particular format is required, but the disclosure should adequately describe the pertinent facts and circumstances.

C. For members of the Board, disclosure shall be made to the General Counsel.

D. Employees of the System Office shall make disclosure to either their immediate supervisor or to the General Counsel.

E. At the colleges, disclosures shall be submitted to the employee's immediate supervisor or other person designated by the President to receive such disclosures.

F. Disclosures made by a President shall be submitted online to the Tennessee Ethics Commission.

V. Special Disclosure Requirements for Researchers Applying For or Receiving NSF or PHS Funding

A. Investigators seeking funding from either the National Science Foundation or the Public Health Service are required to disclose to the investigator's employer all significant financial interests of the investigator:

1. That would reasonably appear to be affected by the research or educational activities funded or proposed for funding by the NSF or PHS; or

2. In entities whose financial interests would reasonably appear to be affected by such activities.

B. Such disclosures must be submitted prior to the time the proposal is submitted to the Federal agency.

C. Further, such disclosures must be updated during the period of the award; either annually or as new reportable financial interests arise.

D. The Institution is responsible for eliminating or managing such conflicts prior to receipt of the award.

E. To facilitate such disclosures, the accompanying disclosure form (Exhibit 1) is available.

F. Each Institution is responsible for determining if a grant, services, or other contract with Federal agencies other than the Public Health Service or the National Science Foundation requires disclosure and / or management of conflicts of interest, and for ensuring that any such requirements are met.

G. Disclosure of financial interests made pursuant to this Section V notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section IV, when specific conflict of interest situations arise.

VI. Special Disclosure Requirements for Certain TBR Employees

A. The Chancellor, all Executive Vice Chancellors, Vice Chancellors and the General Counsel, the Presidents of all TBR institutions, coaches, assistant coaches and employees of athletic departments who are exempt from the provisions of the Fair Labor Standards Act are required to file a financial disclosure form within one month of their initial appointment and annually thereafter in January.

B. Disclosure of financial interests made pursuant to this Section VI notwithstanding, such disclosure does not eliminate the responsibility for making disclosures under Section IV, when specific conflict of interest situations arises.

1. The Chancellor of the Tennessee Board of Regents system and the President of each college by the Tennessee Board of Regents are required by Tenn. Code Ann.§ 8-50-501(a)(15) to file an online Statement of Disclosure of Interests Form with the Tennessee Ethics Commission at https://apps.tn.gov/conflict/, Form ss-8005 (State Officials). For the

Chancellor and the Presidents this Statement of Disclosure will meet the requirements of this Policy.

2. Senior staff at the TBR System Office are required to complete a Statement of Disclosure of Interest Form. That disclosure shall be made using the Tennessee Ethics Commission Form ss-8005 (Exhibit 2) and submitted to the TBR Office of General Counsel.

3. Coaches, assistant coaches, exempt employees of the athletic department and other institutional personnel required to complete a disclosure form shall also use the Tennessee Ethics Commission Form ss-8005, Statement of Disclosure of Interest Form and accompanying instructions. The form shall be submitted to the employing institution's Human Resource Officer or other person designated by the institution's President.

VII. Review of Disclosures

A. Disclosures made under Section VI of this policy by a member of the Board of Regents, the Chancellor, or by a President shall be evaluated by the Board or a duly appointed committee thereof. A member of the Board making a disclosure shall not be entitled to vote regarding disposition of the disclosure.

B. Disclosures made under Section VI of this policy by a person employed by the TBR System Office shall be evaluated by a committee composed of the General Counsel, the Vice Chancellor for External Affairs, and the Vice Chancellor for Business and Finance. If the disclosure is made by one of those three persons, that person shall not be entitled to vote regarding disposition of the disclosure.

C. Each TBR Institution shall establish at least one Review Committee comprised of no fewer than three persons to receive and evaluate disclosures generated under Sections IV, V, and VI herein by employees of the Community Colleges, and Colleges of Applied Technology. Policies and procedures regarding such matters as selection of members, duration of membership, frequency of meetings, etc. shall be adopted by each Institution.

1. A template Institutional policy is included herein as (Exhibit 3).
2. An Institution which fails to explicitly adopt a policy shall be expected to follow the terms of the template policy.
3. Following evaluation of the disclosure, the Committee shall render a decision regarding the issue(s) presented by the disclosure.
4. Any disclosure which indicates an actual violation of law shall be forwarded to the President of the Institution along with the Committee's findings.

D. Persons potentially committing a conflict of interest violation under consideration by a conflict of interest review Committee shall receive notice of the Committee's evaluation, and be given an opportunity to appear before that Committee.

VIII. Federal and State Laws on Conflict of Interest

A. In addition to this policy, there are state and federal laws regarding conflict of interest that apply to employees of the Tennessee Board of Regents and its institutions. All employees are required to comply with all applicable laws. If there is a conflict between this policy and a state or federal law, the most restrictive requirements will control. See Exhibit 4 to this policy for pertinent federal and state laws.

IX. Sanctions

A. Failure to observe restrictions imposed as a result of review of a conflict of interest disclosure or a knowing failure to disclose a conflict of interest may result in disciplinary proceedings under TBR and Institutional policy.

X. Appeals

A. Decisions made by the Board of Regents may not be appealed.

B. Decisions made by the Central Office Review Committee may be appealed to the Chancellor. Decisions of the Chancellor shall be final and binding.

C. Decisions made by an Institutional Review Committee may be appealed to the President of the Institution. Decisions of the President shall be final and binding.

Exhibits

For Exhibits, click the Attachments button at the top right of the page.

Sources

Authority

T.C.A. § 49-8-203; All State and Federal statutes, codes, and/or rules referenced in this policy.

History

TBR Meeting March 20, 1992; TBR Meeting December 11, 1992; TBR Meeting June 11, 1998; TBR Meeting June 28, 2002; TBR Meeting September 26, 2003; TBR Meeting June 11, 2004; TBR Meeting September 25, 2008; August 20, 2014; ministerial revisions -Changed reference from T.C.A. 12-3-106 to 12-4-106 and made corrections to definitions changing relative to immediate family and corresponding different definitions to comply with change in statutes of 2013; Revised TBR Board Meeting September 19 & 20, 2019; Ministerial changes to Exhibit 3 November 10, 2022; Ministerial changes November 21, 2024.

Related Polices

4.02.10.00 Purchasing Policy

4.02.20.00 Disposal of Surplus Personal Property

5.01.05.00 Outside Employment and Extra Compensation for Additional Assignments

5.01.06.00 Intellectual Property

P-090 Nepotism