

2.05.00.00 Distance Education



Policy/Guideline Area

Academic Policies

Applicable Divisions

TCATs, Community Colleges, System Office

Purpose

The purpose of this policy is to establish the criteria and process for the delivery of distance education programs and courses for Tennessee Board of Regents (TBR) technical and community colleges. Distance education is an established and effective method for extending flexible educational opportunities. To provide the citizens of Tennessee with greater access to postsecondary education, the Board of Regents affirms the effectiveness of distance education; recommends the use and development of distance education teaching and learning technologies, materials, and methods; and encourages institutions to take advantage of such opportunities in carrying out their individual missions.

Definitions

- Distance education describes a multimedia method of instructional delivery that can include a mix of online (web-based) instruction, streaming video conferencing, face-to-face classroom time, television, telephone, radio, computers or interactive video, or other combinations of electronic and traditional educational models using present and future/or electronic and telecommunication technology.
- Distance education can be executed in a variety of ways and is consistent in that there is some degree of physical separation of the teacher and the learners. Communication, instruction, and assessment takes place through, or is supported by, technological means with focus on student-to-student, student-to-content, and instructor-to-student interaction.

- The term “distance education” encompasses the terms “distance learning,” “online learning,” “e-learning,” “hybrid learning,” “blended learning,” “digital learning,” and other similar terminology.
- Traditional on-ground instruction refers to instruction in a traditional brick and mortar classroom with an live instructor physically present in the classroom.
- Copyright. Under Federal law, copyright applies to any "original work of authorship fixed in any tangible medium of expression." (17 U.S.C. § 102(a)). Generally, the owner of a copyright has the exclusive rights to reproduce the work, to prepare derivative works, to distribute copies by sale or other transfer of ownership, and to publicly display or perform the work. (17 U.S.C. § 106).
- Work Made For Hire. An employer owns the copyright to a work of authorship when the work was created by an employee within the scope of his/her employment. Some kinds of work can also be owned by the institution as a work made for hire if it is specially ordered or commissioned under a written contract signed by two (or more) parties. (17 U.S.C. § 101, § 201 (b)).
- Fair Use. The Copyright Act provides for some exceptions to the exclusive rights of the copyright owners. One of these exceptions permits fair use of a copyrighted work for purposes such as teaching, scholarship, or research. (17 U.S.C. § 107). The four factors to be considered in determining fair use are:
 - The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - The nature of the copyrighted work;
 - The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - The effect of the use upon the potential market for or value of the copyrighted work.

- Joint Work. A work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. (17 U.S.C. §101).
- Collective Work. Work such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. (17 U.S.C. § 101).
- Compilation. A work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. (17 U.S.C. § 101).

Policy/Guideline

- I. **Requirements and Standards**
 - A. Distance education courses and programs offered by institutions governed by the Tennessee Board of Regents will meet the academic requirements and quality standards of the institution delivering the course. Institutions offering their courses through TNeCampus will meet the quality standards set forth by TNeCampus protocol.
- II. **Applicability of Board Policies**
 - A. Unless otherwise provided, all Board, accrediting agency, and institutional policies, standards, and guidelines for on-campus instruction apply to distance education instruction.
- III. **Funding of Distance Education**
 - A. For the purpose of reporting and appropriations, no distinction shall be made between student credit hours generated through distance education and those generated through traditional on-ground instruction.
 - B. Each institution engaging in distance education should budget for the acquisition and maintenance of distance education hardware, software,

and related courseware and media, and shall maintain careful records of all operating costs.

IV. Administration of Distance Education

- A. Teaching and learning delivered online must be offered using the TBR-contracted learning management system (LMS). Courses offered through the LMS that contain publisher courseware or synchronous delivery methods must initiate through the LMS, i.e., students will access the publisher material by way of system integration with the LMS or by direct links from the LMS.
- B. All TBR institutions will participate as partners in TNeCampus and abide by the policies and procedures established by TNeCampus governance and documentation. To this end, all partners must designate appropriate and participating representatives to the TNeCampus Oversight Committee, Curriculum Committee, Advisory Committee, and other governing committees, subcommittees, and councils. Institutions should offer to their students all TNeCampus courses that align with their local programs and curriculum (with the exception of courses for which there are no institutionally approved faculty). Institutions offering their own online courses may fill their sections first, but when their local sections are full, sections of TNeCampus courses must be offered as an alternative back up.
- C. Institutions should develop specialized policies and procedures relating to issues of distance education delivery and administration specified by this policy and other institutional policies. This policy and its procedures are intended to facilitate the implementation of distance education and address issues to be considered during the planning and delivery of such programs. In establishing policies and procedures, the following stipulations shall apply:

1. Each distance education course offered by an institution must be consistent with the level, nature, and mission of that institution.
2. When a course is offered online, it will carry the same code, title, and credit as other sections of that course and adhere to the same learning outcomes adopted and approved by the institution's Curriculum Committee.
3. Faculty teaching online courses fall under the same accreditation standards and requirements as those teaching traditional on-ground sections.
4. Each online course must provide for student-to-student interaction, student-to-content interaction, and instructor-to-student interaction, as well as opportunities for self-reflection and timely feedback from faculty member(s) teaching the course and students. As appropriate, these interactions may be individual, group, or mixed and may take place electronically, e.g., by telephone, by email, by computer, or by interactive video or other internet technologies.
5. Each online course must include an evaluation of the course, including evaluation of the delivery mode, in its procedures for monitoring and assessing student satisfaction.
6. Each student enrolled in an online course shall have access to all the academic support services, instructional equipment and services, campus events, and other non-academic activities, which the teaching institution provides for other students. Support services may include but are not limited to academic advising, counseling, disability support services, library and other learning resources, tutoring services, and financial aid.

- D. Course developers and instructors of each online course must comply with federal guidelines for accessibility as directed by TBR policy, Section 508 of the Rehabilitation Act, and the Americans with Disabilities Act. Course developers and instructors utilizing materials that are not accessible must provide a written plan for alternate access and a plan for bringing the course into compliance.
- E. Institutions shall ensure compliance with all applicable copyright laws concerning the reproduction and use of printed and digital materials and the use and transmission of all media recordings, performances, or other protected works.

V. **Program Planning and Implementation**

- A. Institutional policies and procedures must contain a written statement of the purpose and goals of the distance education program and describe the assessment methods used to evaluate the success of the program in carrying out those goals and objectives. The following issues must be addressed as institutions plan and implement distance education programs:
 - 1. Faculty, administrators, and other support personnel involved in the development and implementation of distance education must have clearly defined roles, responsibilities, and duties.
 - 2. Faculty involved in distance education must receive specialized training in online teaching and learning practices and in the use of related technologies and the training must be refreshed regularly, as technology and best practices change.
 - 3. Institutions will determine teaching load equivalents and faculty compensation for distance education, including compensation for course development and course maintenance.

4. At the discretion of the Chief Academic Officer, the overload policy for summer semesters for faculty teaching TNeCampus courses is a maximum of twelve (12) hours (four classes), if the additional course (three credit hours) is a TNeCampus course. The three (3) additional hours over nine for the TNeCampus course will be paid as overload hours versus the normal summer school rate. This is optional for campuses and the Chief Academic Officer must sign off on the request.
5. The institution must make academic and administrative information available to online students. This information may include but is not limited to: exams, grading, student-faculty interaction, proctoring, the provision of support services, and registration and fee-payment procedures.
6. Consortium agreements among two or more institutions for the procurement, development, production, or transmittal of online courseware and materials should always be considered.
7. Whenever possible and to realize the greatest savings, the acquisition of technology, software, and other course related materials should be made through the Tennessee Board of Regents' Procurement, Contracts & Payment Services Division.

Procedures

I. [Ownership of Copyrightable Materials](#)

A. General Policy

1. TBR Policy 5.01.06.00 on Patents and Copyright provides the overall guidance for ownership of copyrightable materials. The institution has an interest in the copyrightable materials if:
 - a. The institution sponsors the project; or

- b. There is significant use of the institution's facilities, services, or equipment in the creation of the work; or
 - c. The project is sponsored through the institution by agencies or persons outside the institution. (The contract terms of externally sponsored projects will control ownership of work done pursuant to the contract or grant.)
 2. Policy 5.01.06.00 gives ownership to faculty of their "scholarly and creative works."
 - a. Under this Policy, a faculty member or other institutional employee also retains title to the copyrightable work if the work was developed solely through individual work on personal time.
 3. Policy 5.01.06.00 defines "significant use" of institutional resources as cost to the institution in the amount of \$1,000 or more.
 - a. Use of office computer equipment alone is not considered a significant use of TBR resources.
 - b. This procedure provides more specific guidance about copyright ownership in the context of distance education.
- B. Scholarly Works
 1. The TBR wishes to encourage scholarly works. Therefore, the TBR will not assert an interest in scholarly works and creations related to the faculty member's professional field. These include:
 - a. faculty authored textbooks
 - b. scholarly writing
 - c. art works
 - d. musical compositions
 - e. dramatic and non-dramatic literary works

2. Online course materials and/or multimedia materials that are in the nature of scholarly works created by faculty under the same circumstances that would lead faculty to create more traditional scholarly works will be treated as scholarly.
3. Scholarly work in this context would include course materials created by the faculty when the factors listed in C and D, below, are not applicable.
4. If the institution wants to use such a work and/or share in its commercialization, the institution should secure the desired rights in a contract with the faculty member.

C. Student Work

1. This policy does not apply to undergraduate or graduate students in the absence of an employment or other contract.
2. Generally, ownership of student works is controlled by copyright law.

D. Works for Hire

1. It is very important to have a written agreement assigning responsibility and rights at the beginning of a project.

E. Scope of Employment

1. The institution/school will have sole ownership of intellectual property created by its non-faculty employees within the scope of employment.
 - a. For example, if an institution employs a non-faculty person to design a computer program or to develop a promotional video, the copyright to the program or video belongs to the institution.

2. The institution should ensure that the job description for each relevant non-faculty position includes the creation of or the assistance with the creation of distance education materials.
 - a. The institution should also be certain to add to the TBR form employment contract, either on initial hire or with contract renewal, language which specifies that such works are made in the scope of employment.
 - b. In cases where there is a new assignment to the employee, an agreement in writing signed by both the employee and an institutional representative is strongly urged.
 3. Materials created by faculty members for use in distance education will be solely owned by the institution where:
 - a. The faculty is required to create the materials for a specific class or department by written institution or department policy (e.g., common core course requirement);
 - b. The faculty member is given release time to create the materials; or
 - c. The faculty member is employed and compensated to create specific intellectual property/online education materials.
 4. TNeCampus courses that were developed/paid for by TBR may continue to be used and may be modified by TBR/TNeCampus if/when the developer is not longer under the employ of TBR.
 5. In all cases, the institution and the faculty member should sign a "Work for Hire Acknowledgment Form" (Exhibit 1)
- F. Commissioned Work
1. Under the Copyright laws, (17 U.S.C. § 101, § 201) a work specially ordered or commissioned is owned by the institution if the parties

expressly agree in a written instrument signed by both parties that the work will be considered a work for hire.

2. A Guideline "Commissioned Work for Hire' is attached as "Exhibit 2."
3. Commissioned work is limited by copyright law to contribution to a collective work, part of a motion picture or other audiovisual or multimedia work, a translation, a supplementary work, a compilation, an instructional text, a test, answer material to a test, or an atlas. (17 USC § 101, "Work For Hire" definition).

G. Joint Ownership

1. Works may be created through the joint efforts of two or more faculty members or of faculty and non-faculty employees working in the scope of their employment or working under contract to provide services.
2. Anyone who contributes the kind of expression protected by the copyright law is a joint author if the contribution is intended to be part of an integrated whole.
3. The institution will be the sole owner if all the work is done as work for hire.
4. The institution and the faculty member may be joint owners of the final product if a faculty member works independently but incorporates work done as work for hire by institution employees and/or contractors.
5. It is very important at the beginning of the project to state the contributors' intentions in a written contract signed by all contributors.

6. The General Counsel's office should be consulted to assist in contract drafting.

H. Revision Rights

1. A faculty member should normally retain the right to update, edit, or otherwise revise electronically developed course materials that become out of date, or, in certain circumstances, should place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials.
2. These rights and limitations may be negotiated in advance of the creation of the electronically developed course materials and may be reduced to writing.
3. Absent a written agreement, each faculty member will have the right and obligation to revise work on an annual basis in order to maintain academic standards.
4. If a faculty member does choose to revise the work and such revision is done in a satisfactory manner, the faculty member retains the rights to full royalties as discussed below for another year.
5. If the institution believes a revision is necessary and no revision is made or if the revision made, in the institution's opinion, does not maintain academic standards, the institution may refuse to market the product, or the institution may employ another person to update the work and charge the entire cost of the revision against any royalties paid to the original author.

I. Royalties

1. Royalty division should generally reflect the relative contributions of the parties.
2. In accordance with TBR policy, faculty members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative.
3. On the other hand, the institution retains all royalties that may accrue from the commercialization of electronically published course materials created by faculty members pursuant to contract or as a work for hire, including electronically published course created as a condition of employment.
4. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting. Other circumstances may require review on a case-by-case basis (such as the creation of electronically developed course materials initiated by a faculty member but using substantial institution facilities.)
5. In instances of joint ownership between faculty members where the institution also retains rights to royalties, the faculty members shall determine by written document the division of royalties.
6. Absent a written document of division of royalties, the faculty members shall divide their share pro rata based on participation.

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 rules cited in the body of the policy.

History

TBR Meeting, September 30, 1983; TBR Meeting, September 21, 1990; TBR Meeting, September 17, 1993; Policy revision approved at Board Meeting, June 21 2019, resulting in deletion of Guidelines A-070 & A-075.

Related Polices

[Related Policies]