

## **V: 01:17 APPEALS AND APPEARANCES BEFORE TENNESSEE BOARD OF REGENTS**

The following Volunteer State Community College policy describes procedures for and delineates certain decisions which are precluded from Appeals and Appearances before the Tennessee Board of Regents. This policy is in accordance with Tennessee Board of Regents Policy 1:02:11:00.

A.

### 1. Appeals to the Chancellor

A student or employee of Volunteer State Community College may appeal a final decision of the President of Volunteer State Community College to the Chancellor. TUAPA hearings as outlined in Tennessee Board of Regents Policy 1:06:00:05 are not appealable to the Chancellor. Appeals to the Chancellor shall be limited to alleged violations of state or federal law or Volunteer State Community College/Tennessee Board of Regents policies where the complainant has not filed a state or federal administrative appeal or a lawsuit in state or federal court. If, at any time during the pendency of the appeal, a complainant files a lawsuit or administrative action based on the same subject matter as the appeal, the appeal will be dismissed without further action. Unless there is a violation of state or federal law under the limitations described above, decisions which are not appealable to the Chancellor shall include, but will not be limited to:

1. Termination of executive, administrative/professional and classified/support staff employees during or at the end of the initial probationary period or pursuant to the terms of the contract of employment;
2. Non-renewal of a tenure track faculty appointment during the first four years of the probationary period;
3. Denial of tenure unaccompanied by notice of termination in the fifth year of the probationary period;
4. Non-renewal of a temporary faculty appointment;
5. Salary determinations;
6. Student academic matters, e.g., grade appeals, failure to meet retention policies, etc;
7. Performance evaluations of faculty or staff; and
8. Appeals and supporting documents must be submitted in writing to the Chancellor within twenty (20) calendar days following the date of a written decision by the President. The appeal must state the decision being appealed, the law and/or policy which is alleged to have been violated and the redress desired. The Chancellor shall review the decision on the basis of the record developed at the institution, with any new evidence which for good cause shown was not previously considered. The Chancellor may request a student or employee to appear and present arguments in support of an appeal.

B.

Complaints from students or prospective students regarding accreditation or violation of state or federal law may be submitted to the Chancellor's office for appropriate review and action, as

required by 34 CFR 600.9(a)(1). Any available institutional complaint procedure must be exhausted prior to consideration by the Chancellor or his/her designee.

## 2. Appeals to the Board

A student or employee who is dissatisfied with the decision of the Chancellor on his or her appeal may petition the Board for permission to appeal the decision of the Chancellor to the Board. The petition must be submitted in writing to the Secretary of the Tennessee Board of Regents within twenty (20) calendar days following the date of the Chancellor's written decision.

A. The petition for appeal must present:

- 1) A brief statement of the issues to be reviewed including a statement of the redress desired;
- 2) A brief statement of the facts relevant to the issues to be reviewed, with appropriate reference to where such can be found in the record;
- 3) A statement of applicable law/policy;
- 4) A brief argument; and
- 5) Citations of any applicable authorities, (such as policies, statutes, and cases).

The petition for appeal must be limited to ten (10) pages, typed, doubled spaced, and on 8 ½ x 11" paper. The appropriate standing committee of the Board shall review the decision of the Chancellor on the basis of the record submitted to the Chancellor, with any new evidence which for good cause shown was not previously considered, and determine whether the petition to appeal will be granted.

B. The Board committee, in determining whether to grant an appeal, may consider the following:

- 1) Whether Tennessee Board of Regents policy or procedures have been followed;
- 2) Whether or not there is material evidence to substantiate the decision appealed from; and/or
- 3) Whether or not there has been a material error in the application of the law, which prima facie results in substantial injustice.

The listing (1-3) is not exhaustive and, is at the discretion of the Board committee, other considerations may be taken into account. If the petition to appeal is granted, the committee shall hear the appeal at a subsequent regularly scheduled meeting of the committee and may request the person appealing to appear and present arguments on his or her behalf. The committee shall recommend action on the appeal to the Board. The decision of Tennessee Board of Regents shall be final and binding for all purposes.

## 3. Record

The record on an appeal to the Chancellor or Tennessee Board of Regents shall consist of all relevant documents, statements, and other materials submitted by the person appealing and by the President of Volunteer State Community College. In the event that the person appealing does not submit sufficient information to allow review of the decision being appealed, the Chancellor or Tennessee Board of Regents may require the person appealing to furnish any additional information which may be necessary.

#### 4. Standard of Review

The following provisions shall govern the review by the Chancellor and Board of an appeal under this policy:

- A. A decision may be remanded for further consideration upon a finding that it was not made in accordance with applicable state or federal law or Tennessee Board of Regents, Volunteer State Community College procedures; provided, however, that the decision should not be remanded if the procedural error was not material to the decision and therefore constituted harmless error;
- B. A decision may be modified or reversed only upon a finding that the decision constituted an abuse of discretion or was made in violation of applicable state or federal law or Tennessee Board of Regents or Volunteer State Community College policies; provided, however, that the decision should not be modified or reversed if the violation of policy was not material to the decision and therefore constituted harmless error;
- C. A decision should be affirmed in the absence of a finding of abuse of discretion or material violation of applicable state or federal law or Tennessee Board of Regents or Volunteer State Community College policies or procedures.
- D. Notwithstanding any provision herein to the contrary, any decision may be remanded by the Chancellor or Board for a resolution of the matter which is mutually acceptable to the parties or which is, in the best judgment of the Chancellor or Board, a fair and equitable resolution.

#### 5. Appearances before the Tennessee Board of Regents on Non-Appealable Issues

Individuals may be allowed to address a committee of the Board of an institutional community concerning issues which are not appealable but which are of broad concern to Volunteer State Community College. Such appearances must be approved by the Chancellor or the Chairman of the appropriate Board committee prior to being placed on a committee agenda. Notwithstanding, the Chairman or Vice Chairman of the Board may authorize appearances before the Tennessee Board of Regents on any matter deemed appropriate for Board consideration. Requests for approval to appear before the Board shall be submitted to the Chancellor within twenty (20) calendar days prior to the date that the committee is next scheduled to meet.

TBR Source: 1:02:11:00: Board of Regents Bylaws, as amended; SBR Meeting September 30, 1983; SBR Meeting December 12, 1986; SBR Meeting March 17, 1989; TBR Meeting March 25, 1994. Note: Revised policy approved on September 30, 1983, to be effective on December 16, 1983; June 24, 2011 1:06:00:05: TBR Meetings, June 30, 1978; September 30, 1983; December 14, 1984; March 15, 2002

VSCC Source: November 11, 1987, President; April 6, 1999, President; January 8, 2009, President's Cabinet; January 4, 2012, President