

# **UNT SYSTEM OFFICE OF GENERAL COUNSEL**

## **GUIDE TO POLICY LEGAL SUFFICIENCY REVIEW FOR SYSTEM AND CAMPUS OFFICIALS**

### **INTRODUCTION**

Rule 02.200 of the University of North Texas System Rules of the Board of Regents (hereinafter “Regents Rule(s)”) delegate authority to the Chancellor of the UNT System to develop and adopt System and System Administration policies and authority to the Presidents to develop and adopt policies for their respective institutions. Subsection 02.206 of this rule requires the UNT System Office of General Counsel (“OGC”) to conduct a legal review of all “System, System Administration, and Institution policies considered for adoption or amendment” prior to approval. The purpose of this document is to explain the purpose, scope and meaning of policy reviews conducted by the OGC pursuant to Rule 02.200.

#### **I. Responsibilities of Institutional Policy Makers**

The responsibility to make policy rests solely with system and campus officials. In fulfilling their general policy making duties, officials are responsible for developing, drafting and publishing policies that reflect their business, administrative, financial, ethical and operational judgment; contain sufficient technical, administrative and operational guidance to achieve the desired policy outcome; address relevant business,

7. provides the guidance necessary to achieve the policy's objective(s); and
8. clearly explains any decision-making processes required by the policy.

## **II. Responsibilities of the OGC and Purpose of the Legal Review**

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A new policy or revision to an existing policy is legally insufficient only when it:

1. does not comply with, conflicts with or is inconsistent with federal or state law, Regents Rule, or System policy (including when the policy fails to include a provision required by law, Regents Rule or System policy);
2. contains words, terms, phrases or provisions that are so ambiguous, vague, or confusing as to raise serious doubt concerning whether the policy complies with law, Regents Rule or System policy;
3. is written such that the policy's organization itself raises questions concerning whether the policy complies with law, Regents Rule or System policy; or
4. is written in a manner that the language itself raises material doubt concerning whether the policy complies with law, Regents Rule or System policy, or doubts about the policy's legal defensibility.<sup>3</sup>

If a policy is deemed legally insufficient, the reviewing attorney will identify the law, Regents Rule, or System policy with which it conflicts and recommend corrections that will bring the policy into compliance. For example, an attorney may recommend adding the phrase "to the extent allowed by state law" or "in accordance with Regents Rules" to a section of a policy that, as written, exceeds authority granted under law, Regents Rule or System policy.

If the words used in a policy are ambiguous, vague, or confusing, if a policy is incomplete, or, if a policy itself is organized in such a manner as to raise material doubt about whether it complies with law, Regents Rule or System policy, or about its legal defensibility, the attorney will propose language that will render the policy legally sufficient when possible.

Generally, comments concerning legal sufficiency can be categorized as legal, substantive, or non-legal. These comments are defined as:



to be disclosed to third persons and therefore is protected from disclosure by the attorney-client privilege.

Attorneys will generally include the phrase "ATTORNEY-CLIENT COMMUNICATION" on the policy document upon completion of the review. However, system and campus officials, including campus policy directors, should make every effort to ensure that the legal sufficiency review is not given or otherwise disseminated to individuals who do not need it to carry out his or her official duties even if the review is not marked as an attorney-client communication.

## **VI. Document Management – Saving Legal Sufficiency Reviews**

The Office of General Counsel will maintain a copy of the legal sufficiency review. However, the campus is the official custodian of the review and the policy approval form.

## **CONCLUSION**

We hope this document explains the purpose and scope of our legal sufficiency reviews and assists you when developing and revising policies.

Questions, comments and suggestions concerning this guide are welcome and should be directed to the Vice Chancellor and General Counsel at (214) 752-5920.

## **References**

1. "Improving the Quality of Environmental