

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

2013 OCT 21 AM 10:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: WV Code 18B-1-6; 18B-1B-5

RULE TYPE: PROCEDURAL x INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE \_\_\_\_\_

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW  
\_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES x NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 40

TITLE OF RULE BEING AMENDED: Equal Opportunity and Affirmative Action  
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS November 21, 2013

  
Authorized Signature

FILED  
2013 OCT 21 AM 10:07  
OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**TITLE 135  
PROCEDURAL RULE  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE  
EDUCATION**

**SERIES 40  
EQUAL OPPORTUNITY and AFFIRMATIVE ACTION**

**§135-40-1. General.**

- 1.1. Scope. This rule establishes equal opportunity and affirmative action policy.
- 1.2. Authority. West Virginia Code §18B-1-6 and §18B-1B-5.
- 1.3. Filing Date. October 21, 2013
- 1.4. Effective Date. November 21, 2013

**§135-40-2. General Policy.**

- 2.1. It shall be the policy of the West Virginia Council for Community and Technical College Education (Council) and the West Virginia Higher Education Policy Commission (Commission) to provide equal employment opportunities to all qualified employees and applicants and to prohibit discrimination or harassment against any such individuals on the basis of protected characteristics. The Council and Commission consider race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity and veteran status as protected characteristics and will not permit discrimination or harassment against any employee or applicant for employment on the basis of any such characteristic. The Council and Commission will conform both to the letter and the spirit of the law and regulations with respect to prohibiting any such discrimination or harassment and will engage in affirmative action to employ, advance in employment and treat all qualified persons without discrimination in any employment practices.
- 2.2. The scope of this policy prohibiting discrimination and harassment extends, but is not limited to, the following: recruitment, employment, promotion, transfer, training, working conditions, wage and salary administration, benefits and the application of all other employment-related policies. These principles of non-discrimination and anti-harassment also apply to the selection and treatment of independent contractors, personnel working on Council and/or Commission premises and any other persons or firms doing business with the Council and Commission.

- 2.3. Under the Council's and Commission's additional authority to allocate specified functions and responsibilities among the institutions within the jurisdiction of the Council and Commission, each institution shall accept primary and long-term responsibility for the development and implementation of equal employment opportunity and affirmative action policies consistent with the Commission's and Council's guidance and all applicable laws and regulations.
- 2.4. Each institution and the Council and Commission shall take the initiative in developing or modifying its own plans to achieve compliance with the equal employment opportunity and affirmative action policies of the Council and Commission as well as those of the state and federal governments. The president of each institution shall, through appropriate means, establish and maintain a positive program of equal employment opportunity and affirmative action within her/his jurisdiction in accordance with all laws and regulations applicable to the institution. The equal employment opportunity and affirmative action goals of the institution must be integrated into and consistent with other performance goals of the institution. The realistic goals and timetables of each institution shall be vigorously pursued to achieve a proportional representation of minorities and women in the workforce based on availability within the relevant workforce recruitment markets. The effective pursuit of affirmative action requires not only the adoption of an adequate plan, but also results-oriented procedures designed to ensure the involvement of managers at all levels of each institution. Institutional affirmative action plans shall be submitted to the Chancellors by July 1 of each year.
- 2.5. The Chancellors shall appoint an equal employment opportunity/affirmative action advisory council, to be known as the Chancellors' Equal Employment Opportunity Council, composed of at least one representative from each of the campuses or institutions. The Council will help to facilitate the achievement of equal employment opportunity/affirmative action pursuit and compliance across the institutions under the Council's and Commission's jurisdiction. Under the general direction of the Chancellors, the Council shall be responsible for, but not necessarily limited to, the following duties and responsibilities:
  - 2.5.1. Conducting periodic reviews of institutional equal employment opportunity/affirmative action plans and programs, while providing any assistance that may be required to improve programs and realize objectives.
  - 2.5.2. Consulting from time to time with the Chancellors and presidents of institutions and/or their designees on equal employment opportunity/affirmative action matters.

- 2.5.3. Reviewing copies of equal employment opportunity reports of all institutions submitted to federal authorities responsible for enforcement of laws and regulations and providing consultation to the Chancellors where appropriate or as requested.
- 2.5.4. Helping to assure that current information affecting equal employment opportunity/affirmative action is disseminated to institutions and their employees.
- 2.5.5. Conducting other advisory assignments as directed by the Chancellors.

**WV Council for Community and Technical College Education  
Meeting of October 17, 2013**

**ITEM:** Final Approval of Series 40, *Equal Opportunity and Affirmative Action*

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved, That the West Virginia Council for Community and Technical College Education approves Series 40, Equal Opportunity and Affirmative Action, for final filing with the Secretary of State.*

**STAFF MEMBER:** Mark Toor

**BACKGROUND:**

Series 40, Equal Opportunity and Affirmative Action, is the procedural rule that establishes policy relating to equal opportunity and affirmative action. At the August 9, 2013 Council meeting, the updated procedural rule was approved for filing with the Secretary of State for a thirty-day public comment period. Summarized below are the comments received and staff response. No additional changes have been made to the procedural rule and it is recommended that the rule be approved for final filing with the Secretary of State.

Comment: A comment was received proposing to add a definition to the term "harassment" to the rule or to remove that term from the rule altogether.

Response: Series 40 is merely the Council's general statement of policy relating to equal employment opportunities and affirmative action. As such, there are no definitions contained within the rule for the terms "discrimination," "harassment" or any other term of art contained within the rule. The *de facto* application of the general terms of Series 40 is accomplished through the individual institutional non-discrimination and anti-harassment policies, each of which should include appropriate definitions for the well-established terms of art such as "discrimination" and "harassment." No change was made to address this comment.

Comment: A comment was received suggesting a change in the Series 40 due date for the submission of institutional Affirmative Action Plans to the Council, presently set at July 1 of each year. The basis of the comment was a desire to use a different plan year that would provide additional preparation time before the submission due date.

Response: Since nothing in Series 40 dictates when an institution's plan year must begin, there is no need to alter the due date for the submission of each institution's

plan to the Council under this rule. Rather, each institution is free to adopt its own AAP plan year definition and take whatever time is necessary to prepare the plan provided that it is submitted by the Series 40 due date. No change was made to address this comment.

Comment: A comment was received criticizing the absence of newly-protected characteristics in the rule. This comment, however, was mistakenly based exclusively on an old version of Series 40 before the revisions already approved by the Council. The comment was effectively withdrawn upon notification of the changes already made to the rule.

Response: No change was made to address this comment.

It is recommended that the Council approve Series 40, Equal Opportunity and Affirmative Action for final filing with the Secretary of State.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

135-41 Community and Technical College Developmental Education Competencies

Rule Title: \_\_\_\_\_

Type of Rule: \_\_\_\_\_

☐ Legislative ☐ Interpretive ☒ Procedural

Agency: \_\_\_\_\_

WV Council for Community and Technical College Education

Address: \_\_\_\_\_

1018 Kanawha Blvd., East, Suite 700

Charleston, WV 25301

Phone Number: \_\_\_\_\_

304-558-0265

Email: [skidmore@wvctcs.org](mailto:skidmore@wvctcs.org)**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no direct costs or revenues associated with this rule.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

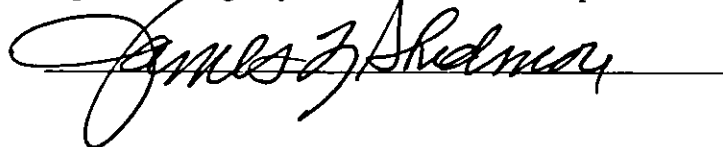
Please include any increase or decrease in fees in your estimated total revenues.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 10/18/13

Signature of Agency Head or Authorized Representative







**WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

Nelson B. Robinson Jr., Chair • James L. Skidmore, Chancellor

## SUMMARY

Title 135

Procedural Rule

WV Council for Community and Technical College Education

Series 40

*Equal Opportunity and Affirmative Action*

This rule establishes equal opportunity and affirmative action policy which states that the West Virginia Council for Community and Technical College Education will provide equal employment opportunities to all qualified employees and applicants and to prohibit discrimination or harassment against any such individuals on the basis of protected characteristics.