

WEST VIRGINIA BOARD OF REGENTS

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THE SECRETARY OF STATE

~~WEST VIRGINIA~~ INTERPRETIVE RULES
WEST VIRGINIA BOARD OF REGENTS

~~CHAPTER 18-26~~

SERIES ~~18~~ 57

THIS DATE April 10, 1985
ADMINISTRATIVE LAW DIVISION

SUBJECT: ~~POLICY BULLETIN NO. 57~~

Student Rights & Responsibilities Rules

SECTION I. GENERAL

1.01 Scope - Policies, Rules, and Regulations regarding student rights, responsibilities, and conduct in West Virginia State universities and colleges

1.02 Authority - W.Va. Code 18-26-8

1.03 Filing Date - April 10, 1985

1.04 Effective Date - July 1, 1985

1.05 Repeal of Former Rule - Revises and Replaces Policy Bulletin No. 57 dated November 13, 1984. To be implemented July 1, 1985.

SECTION ²~~II~~. PURPOSE

2.01 Purpose - The purpose of these policies, rules, and regulations includes, but is not limited to, the following:

- a. To establish a general policy on student life, including a statement on student rights and responsibilities, at the state colleges and universities.
- b. To identify behavioral expectations of students and certain prohibited acts by students at the state colleges and universities.
- c. To prescribe penalties and sanctions for such prohibited conduct.

- d. To define generally the powers, authority, and duties to be exercised under the control of the Board of Regents, by the presidents and officials of the State colleges and universities in applying these policies, rules, and regulations.
- e. To prescribe disciplinary actions and proceedings to be taken in cases of the violations of these policies, rules, and regulations.

2.02 Effective Date - These policies, rules, and regulations are effective immediately inasmuch as they cover any general or emergency situation that might arise at any State college or university, and they supersede any existing policies, rules, and regulations that are in conflict with these policies, rules, and regulations.

2.03 Filing Date - These policies, rules, and regulations were filed in the Office of the Secretary of State of West Virginia on the 7th day of August 1970.

SECTION III.³ DEFINITIONS

3.01 Board of Regents - The West Virginia Board of Regents.

3.02 Institution or Institutions - Any or all of the institutions of higher education, the State colleges and universities, or any branch or division thereof, over which the Board of Regents shall have authority, responsibility, or control.

3.03 President - The chief executive officer of the institution, whatever the title, whether responsible directly to the Board of Regents or through some other officer to the Board of Regents, and shall include all those acting for or on behalf of such chief executive officer, at or by his direction, or at or by the direction of the Board of Regents.

3.04 Property - Any property, whether owned, rented, or otherwise held or used by the Board of Regents, by an institution, or by the institutional community.

3.05 Activity - All or any operations conducted, sponsored, promoted, operated, or otherwise engaged in by an institution, including, by way of illustration and not as limitation of the foregoing, classroom and course activities, recreational and cultural programs, maintenance or building programs, committee or other business activity, registration, advising, teaching, admissions, placement, disciplinary or routine office activity, research, or service.

3.06 Facility - Any and all property of an institution used or usable in any activity of an institution.

3.07 Campus - All the property and facilities of any institution serving as the locus in quo of any activity of an institution.

3.08 Faculty - Those employees of the Board of Regents who are assigned to teaching or research or service functions at an institution, and who hold academic rank.

3.09 Staff - Those employees of the Board of Regents who are assigned to teaching or research or service functions at an institution, and who are not members of the faculty.

3.10 Student - Any person who has been admitted to an institution to pursue a course of study, research, or service, who is currently engaged in an institutionally sponsored activity, and who has some right or privilege to be on the campus or in the facilities of the institution, or to use the same, in connection with study, research, or service, or who yet has some right or privilege to receive some benefit or recognition or certification from the institution, under the rules, regulations, or policies of the Board of Regents or the institution.

3.11 Member of the Institutional Community - Any officer, administrator, faculty member, staff member, employee, student of or at an institution, member of the institutional Board of Advisors, as well as any person authorized to participate in an institutional activity at the time applicable.

SECTION ⁴IV. POLICIES REGARDING STUDENT RIGHTS AND RESPONSIBILITIES

4.1 The submission of an application for admission to an institution represents an optional and voluntary decision on the part of the prospective student to partake of the program and privileges offered by the institution pursuant to the policies, rules, and regulations of the Board of Regents and the institution. Institutional approval of that application, in turn, represents the extension of a right or privilege to join the institutional community and to remain a part of it so long as the student fulfills the academic and the behavioral expectations that are set forth in the policies, rules, and regulations of the Board of Regents and the institution.

4.2 ~~4.01~~ Freedom of Expression and Assembly - The student enjoys the essential freedoms of scholarship and inquiry central to all institutions of higher education. In exercising these freedoms the student has certain rights and responsibilities, including,

but not limited to, the following:

- a. To have access to campus resources and facilities.
- b. To espouse causes.
- c. To inquire, discuss, listen to, and evaluate.
- d. To listen to any person through the invitation of organizations recognized by the institution.
- e. To have a free and independent student press which adheres to the canons of responsible journalism.
- f. To not violate the rights of others in matters of expressions and assembly.
- g. To abide by policies, rules, and regulations of the Board of Regents and the institution and federal, state, and local statutes and ordinances pertaining to freedom of expression and assembly.

2.7
4.02 Freedom of Association - Students may organize whatever associations they deem desirable, and are entitled to affiliate with any group or organization for which they meet membership qualifications. However, institutional recognition of student organizations shall be limited to those whose purposes comport with the educational mission of the institution.

4.03 A.4 Right to Privacy - The student is entitled to the same safeguards of the rights and freedoms of citizenship as are afforded those outside the academic community, including, but not limited to, the following:

- a. Privileged communication on a one-to-one relationship with faculty, administrators, counselors, and other institutional functionaries.
- b. Respect for personality, including freedom from unreasonable and unauthorized searches of student living quarters.
- c. Confidentiality of academic and disciplinary records.
- d. Legitimate evaluations made from student records.

4.04 A.5 Responsibilities of Citizenship - The student is expected, as are all citizens, to respect, and abide by, local ordinances and State and Federal statutes, both on and off the campus. As a member of the educational community, the student is expected to abide by the institution's code of student conduct which clarifies those behavioral standards considered essential to its educational mission.

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4.05 Disciplinary Proceedings - Disciplinary proceedings for students accused of committing offenses must be consistent with such constitutional provisions guaranteeing due process of law as are applicable to them. In all disciplinary proceedings, the student shall be considered innocent until proven guilty of any charge. Each institution shall have authority for promulgating rules and regulations, consistent with policies, rules, and regulations of the Board of Regents.

SECTION ⁵ STANDARDS OF CONDUCT: RULES AND REGULATIONS

5.01 Conduct Required in General - All students at the institutions are subject to, and are required to comply with, observe, and obey the following:

- a. The laws of the United States.
- b. The laws of the State of West Virginia.
- c. Local city, county, and municipal ordinances.
- d. The policies, rules, and regulations of the Board of Regents and the institution.
- e. The directions and orders of the officers, faculty, and staff of the institution who are charged with the administration of institutional affairs on campus.

5.02 Prohibited: Disorderly Conduct - Any and all students who behave in a disorderly or unlawful manner, such as the actions listed below, but not limited to those listed, in or about institutional property or facilities, are subject to institutional disciplinary action which may result in probation, suspension, or expulsion, whether or not there is prosecution for such violations in local, State, or Federal courts:

- a. Fights.
- b. Assaults or battery.
- c. Public disturbances.
- d. Unlawful assembly.
- e. The violation of any municipal, state, or federal law, or the rules and regulations of the Board of Regents or the institution.

5.03 Prohibited Conduct: Theft or Damage of Property - No student shall, individually or by joining with one or more others, misuse, steal, damage, or destroy any institutional property or facilities or the property of any member of the institutional community on or in campuses, property, or facilities of an institution. Students involved in any such prohibited actions or conduct shall be subject to institutional disciplinary action which may result in probation, suspension, or expulsion, whether or not there is prosecution for such actions or conduct in local, State, or Federal courts.

5.04 Prohibited Conduct: Disruption - No student shall, individually or by joining with one or more other persons, do any of the following:

- a. Disrupt or interfere with any institutional activity, program, meeting, or operation.
- b. Interfere with the rights of any member of the institutional community.
- c. Injure or threaten to injure, or coerce by bodily harm or restraint or threats thereof or any other means, any member of the institutional community or persons lawfully on the institution's campus, property, or facilities.
- d. Seize, hold, commandeer, or damage any property or facilities of an institution, or threaten to do so, or refuse to depart from any property or facilities of an institution upon direction, pursuant to policies, rules, and regulations of the Board of Regents or the institution, by an institutional officer, faculty or staff member, or other person authorized by the President.

Students involved in any such action or activities shall be subject to institutional disciplinary action which may result in probation, suspension, or expulsion, whether or not there is prosecution for such actions in local, state, or federal courts.

5.05 Prohibited Conduct: Hazing - No student shall, individually, or by joining with one or more other persons, engage in any act of hazing involving another member of the institutional community. The President of each college and university shall promulgate rules and regulations prohibiting hazing in any form. Such rules and regulations shall include provisions to:

- a. Prohibit any action which subjects a pledge, initiate, or member of a student organization to activities which are personally demeaning or involve a substantial risk of physical injury. This includes both organized rites of initiation and informal activities.
- b. Include the institutional hazing policy in the student handbook, or such other publications which are readily distributed to all students. The institutional policy shall provide that students involved in hazing activities are subject to institutional disciplinary action which may result in the sanctions of suspension or expulsion, whether or not there is prosecution for such actions in local, state, or federal courts.

- c. Identify, through student publications and other appropriate mechanisms, the sanctions which apply to student organizations engaged in prohibited hazing activities or prohibited rites of initiation. These sanctions may include, but are not limited to: denial of the use of institutional facilities, removal of some or all social privileges, removal of institutional recognition, and a recommendation to regional or national headquarters that the organizational charter be revoked. The President of the institution shall take steps to ensure that the chief officer of each student organization is informed at least annually of the institution's hazing policy and the sanctions which may be imposed upon offending organizations.
- d. Ensure that students accused of hazing offenses where the sanctions of suspension or expulsion may result are afforded the opportunity for a disciplinary hearing, as provided in Section 7.04 of these policies, rules, and regulations.

5.06 Prohibited Conduct: Discrimination - No student shall, individually or by joining with one or more other persons, promote or demand action on their part or any other member of the institutional community that would constitute unlawful discrimination on the basis of race, sex, color, political affiliation, handicap, or age. Students involved in any such action or activities shall be subject to institutional disciplinary action which may result in probation, suspension, or expulsion, whether or not there is prosecution for such actions in local, State, or Federal courts.

SECTION VI. POWERS, AUTHORITY, AND DUTIES OF THE PRESIDENT

6.01 General Powers, Authority, and Duties of the Presidents: The chief executive officer of each institution shall be the President. The President shall be responsible for the entire administration of the institution, subject to the control of the Board of Regents. It shall be the President's duty to attend to and administer the laws of the State of West Virginia which may be applicable on the campus; the policies, rules, and regulations of the Board of Regents; and policies, rules, and regulations of the institution. Each such President is hereby vested with authority requisite to that end, subject to the control of the Board of Regents.

6.02 Powers, Authority, and Duties of the Presidents: Delegation of Authority and Responsibility - Any authority, responsibility, or duty granted to or imposed upon such a President by these policies, rules, and regulations may be delegated by the

President, subject to the control of the Board of Regents, to another person or persons on the faculty, staff, or student body of the institution.

All persons dealing in the matters so delegated by the President shall be required to deal with the persons to whom the President shall have delegated such authority, responsibility, or duty, and such persons shall be required to deal with the institution or the president through such designees, except on appeal to the President as specified by the President.

6.03 Powers, Authority, and Duties of the Presidents: Promulgation of Institutional Regulations for Student Discipline - The President of each institution shall have authority and responsibility, subject to the control of the Board of Regents, for the discipline of all students at the institution.

The President, with the advice of faculty and students and subject to the control of the Board of Regents, shall develop, promulgate, and use disciplinary regulations and channels at each institution not inconsistent with the policies, rules, and regulations of the Board of Regents.

6.04 Powers, Authority, and Duties of the Presidents: Activities on, and Use of, Institutional Property or Facilities - The use by any person of the property or facilities of the institutions shall be controlled and governed by the policies, rules, and regulations of the Board of Regents.

Regulations governing the use of such property or facilities at a particular institution shall be promulgated by the President thereof, with the advice of faculty and students, and shall conform to these policies, rules, and regulations and be subject to the control of the Board of Regents.

6.05 Powers, Authority, and Duties of the Presidents: Public Use of Institutional Property or Facilities, and Restrictions Imposed - Subject to the control of the Board of Regents, notwithstanding any rule, regulation, policy, or express or implied permission for the use of, or presence in or on, the property or facilities of any institution, any person who (a) is not a student presently registered for current classes or course work at the particular institution or is not an employee of the Board of Regents currently on duty at the institution and (b) by his/her conduct or speech or expressions, causes or, in the opinion of the President of the institution or the President's delegate of authority, may be reasonably expected to cause harm to persons, property, or facilities, or disruption of, or interference with, any activity of the institution, is no longer authorized to be in or on the property or facilities of the institution. In such

instance, the President of such institution, or the President's delegate of authority, shall cause such person to be ejected from, kept off, and kept out of the property and facilities of the institution. The President or delegate of authority, may take whatever legal or institutional action is necessary to effectuate this authority.

6.06 Powers, Authority, and Duties of the Presidents: Use of Institutional Property or Facilities: Activities Which Interfere With, Disrupt, or Inhibit Institutional Operations - The assertion by any person or persons of rights of speech, assembly, press, or other expression with the intention to interfere with access to, or use of, the institution's property, facilities, activities, programs, or operations by those properly and regularly using the same is expressly prohibited, any rule, regulation, or permission express or implied notwithstanding.

6.07 Powers, Authority and Duties of the Presidents: Limitations of Assembly and Student Use of Institutional Property or Facilities - Subject to the control of the Board of Regents, when, in the judgment of the President of any institution, an assembly is not in the best interests of the institution or the individuals concerned, in that it presents a clear and present danger of harm to persons, property, or facilities or interference with or disruption of activities, such President or his delegate of authority shall prohibit such assembly and shall take measures to prevent harm to persons, property, or facilities, or to prevent interference with or disruption of activities, as may be necessary in the circumstances or may be reasonably expected to come into existence.

6.08 Powers, Authority, and Duties of the Presidents: Limitation of Activities and Emergency Measures - When there has been harm or damage to persons, property, or facilities, or when there has been disruption of or interference with institutional activities, or when there has been seizure or occupation of property or facilities by persons no longer authorized, then, subject to the control of the Board of Regents, when the President of an institution at which such occurrences happen or take place, deems it necessary to end or to control such occurrences and the circumstances caused thereby, that President shall take any or all of the following actions or other appropriate actions:

- a. Declare a state of emergency to exist on the campus, and:
 - (1) Close down any part of the institution for any length of time, or limit use of certain parts of

- the campus, property, or facilities to certain persons at certain times;
- (2) Impose curfews on the presence of persons in or on institutional facilities or property;
 - (3) Place bans on gatherings of persons at places or times on or in the institution's property or facilities; or
 - (4) Enlist the aid of any public authority, police or otherwise, as may be necessary to restore order, protect persons, property, health, safety, or welfare.
- b. Immediately suspend any student who is found involved in prohibited action or conduct and who is (1) first advised, told, or notified that a particular action or conduct is prohibited, and who (2) continues such action or conduct in spite of the warning. Such immediate suspension shall be followed with speedy disciplinary proceedings consistent with these policies, rules, and regulations.
- c. See to the enforcement of the laws of the State of West Virginia; the policies, rules, and regulations of the Board of Regents; and the policies, rules, and regulations of the institution, including any emergency orders imposed as a result of the state of emergency so declared.

SECTION VII. DISCIPLINARY ACTION: PROCEEDINGS

7.01 Application to Students - Any person who is a student as defined in these policies, rules, and regulations shall be subject to disciplinary action by the institution at which he/she is a student if that person is involved on the campus of that institution in any of the actions or conduct prohibited by these policies, rules, and regulations, notwithstanding the fact that at the time the student is also an employee of the Board of Regents. In taking disciplinary action against a student, as defined herein, an institution may act to remove any status of such a person or to revoke or remove any right or privilege of such person as a student, or to withhold, remove, or cancel any benefit, recognition or certification, including the conferring of a degree, which such a person might yet not have received from the institution.

7.02 Sanctions in Disciplinary Action - The following sanctions may be imposed upon students as a result of disciplinary actions by an institution:

- a. Probation - exclusion from participation in certain institutional activities, property, or facilities for a definite stated period of time, and may be conditioned upon compliance with policies, rules, and regulations, or specified required activity during the period of probation.
- b. Suspension - exclusion from all institutional activities for a definite stated period of time up to one academic year, and any condition on resumption of activities, if any, also may be imposed.
- c. Expulsion - termination of all student status, including any remaining right or privilege to receive some benefit or recognition or certification, and conditions for readmission, if any, may be stated in the order.

Normally, students facing suspension or expulsion from the institution will be entitled to a hearing prior to the imposition of the sanction. However, a student may be temporarily suspended pending final action on the charges when the student's continued presence on campus would constitute a potential for serious harm to himself/herself or to the safety of other members of the institutional community. Such temporary suspension shall be followed with speedy disciplinary proceedings consistent with these policies, rules and regulations.

Sanctions of lesser severity, including restitution, may be imposed in any case, at the discretion of the President of the institution.

Each institution shall identify in its student handbook, or other similar publication, the offenses for which a student who is found guilty may be subject to the sanctions of suspension or expulsion.

A sanction of suspension or expulsion imposed by a college or university under the jurisdiction of the Board of Regents shall apply to the person sanctioned not only at the institution where the sanction was imposed, but shall also be effective at all colleges and universities under the jurisdiction of the Board of Regents. A student who is expelled from one institution in the Board of Regents' system may not be considered for admission to another institution in the system until one year has elapsed after the student has been expelled.

Where a sanction is scheduled for a particular semester and the time lapse during an appeal process makes enforcement in the designated semester impossible, then the sanction shall be applied to the semester in progress at the time of completion of the appeal. In the event that sanction cannot be implemented during

that semester, then it shall be applied during the next regular semester, except that if the student has completed the course of study during the pendency of the appeal, the sanctions, where possible, shall be carried out retroactively to affect the grades and records of that student during the semester designated in the original sanction. In any event, the accused student may not be graduated during the process of appeal.

7.03 General Requirements for Disciplinary Channels - Rules and regulations establishing disciplinary channels at the institutions, promulgated pursuant to Sections 4.05 and 6.03 hereof, or any of these policies, rules, or regulations, shall provide, among other things, at the least for the following:

- a. There shall be a hearing board whose members shall be members of the institutional community, including student and faculty representatives, and whose number shall be at least three, and, in any event, on any panel hearing a case, shall be odd.
- b. The hearing board shall have jurisdiction of cases involving the alleged violations of Sections 5.02, 5.03, 5.04, 5.05, and 5.06 of these policies, rules, and regulations, and of cases involving students suspended pursuant to Section 6.08b. of these policies, rules, and regulations.
- c. The jurisdiction and authority of the hearing board shall be, in cases of disciplinary action against students:
 - (1) To hear evidence;
 - (2) To make findings of fact from the evidence presented;
 - (3) To make recommendations to the President of the institution, based upon such findings of fact, as to the disposition of the disciplinary action, including sanctions to be imposed, if any; and
 - (4) To refer for hearing to a lesser disciplinary channel in cases not involving potential suspension or expulsion. (In lieu of calling together the entire hearing board to decide on referrals, a referral board, including a faculty representative and a student representative selected from the hearing board, may decide the level of hearing by establishing hearing levels for categories of disciplinary infractions or by considering individual referral cases.)

- d. The hearing board shall have such appellate jurisdiction as may be appropriate to the institution, from the determinations and recommendations of any lesser disciplinary channel.
- e. The student may then object or take exception to the recommendations of the hearing board under such procedures as the President may deem appropriate.

7.04 Procedural Standards in Disciplinary Proceedings - In any disciplinary proceedings before a hearing board established pursuant to Section 7.03 brought against a student for alleged misconduct, actions, or behavior for which sanctions of suspension or expulsion may be imposed, the following procedural standards shall be observed.

- a. Written charges of violation shall be presented to the accused student which shall include at least:
 - (1) A statement of the policy, rule, or regulation which allegedly has been violated;
 - (2) A statement of the facts and evidence to be presented in support of the charges made with sufficient clarity to reasonably disclose the time and place of the occurrence and the actions or behavior complained of;
 - (3) A statement that a hearing will be held before the hearing board on the charges, together with notice of the date, time, and place of the hearing; and
 - (4) In cases involving potential suspension or expulsion, as specified in institutional policies, the student must be informed of his/her right to have legal counsel present at the hearing (students retain attorneys in such cases at their own expense and must notify the hearing board at least forty-eight hours prior to the hearing if the attorney will be present at the proceedings).

It is expressly provided, however, that such written charges shall not be fatally defective so as to prevent the set hearing or to require further amplification if such minimum requirements are met reasonably and in good conscience at the discretion of the hearing board.

- b. Said written charges shall be served upon the student charged by one of the following means:

- (1) Handing a copy to the student in person, if he/she can be found, with reasonable diligence in the town where the institution is located and the hearing is to take place; or
- (2) Mailing, via certified mail, a copy to the student at the residence used while in attendance at the institution, as last noted on his/her official records at the institution; or
- (3) If the student is not presently registered at the institution, or in any event, by mailing, via certified mail, a copy to his/her last known permanent or home residence as disclosed by official records at the institution.

It is expressly provided, however, that such service of charges and notice of hearing shall not be defective if the student shall have hidden, refused mail, or shall have failed to notify the institution of his/her current address while attending the institution or of the current permanent home address, and the hearing may proceed without hindrance or delay.

c. A hearing shall be held at the date, time, and place specified (unless postponed by the hearing board for good cause shown) and shall provide the student at least five days notice from the serving of the charges (unless such notice is waived by the student). The hearing shall be conducted in such a manner as to do substantial justice and shall include at least the following:

- (1) The accused student has the right to have an advisor. Such an advisor may be a parent or guardian, a student at the institution, or a member of the faculty or staff of the institution. An advisor may consult with the accused student, but may not speak on behalf of the student or otherwise participate directly in the proceedings, unless given specific permission to do so by the hearing board. In cases involving the potential for suspension or expulsion, legal counsel may be present as specified in Section 7.04a.(4) of this policy. Legal counsel may serve in an advisory capacity to the accused student in such cases. However, legal counsel may not speak on behalf of the student or otherwise participate directly in the proceedings. The college or university may request legal counsel through the Office of the Chancellor. Counsel retained by the institution may participate only in

an advisory capacity and may not speak on behalf of the institution or otherwise participate directly in the proceedings.

- (2) All material evidence may be presented subject to the right of cross-examination of the witnesses.
 - (3) There shall be a complete and accurate record of the hearing. In the case of an appeal, a written transcript may be required.
 - (4) In any event, the accused student shall be entitled to be present throughout the presentation of evidence, testimony of witnesses, and arguments of parties; to know the identity of and content of testimony of the witnesses against him and have them present at the hearing at appropriate times; and to present witnesses and any evidence on his behalf as may be relevant and material to the case.
- d. No recommendation for the imposition of sanctions may be based solely upon the failure of the accused student to answer charges or to appear at the hearing. In such a case, the evidence in support of the charges shall be presented and considered. And, in any event, all findings of fact and recommendations shall be based solely upon the evidence in the case as a whole.
- e. After the hearing, the hearing board shall make findings of fact and recommendations for the disposition of the case and sanctions to be imposed, if any, and forward the same to the President of the institution. Within ten working days following receipt of the hearing board recommendations, the President shall review the facts of the case and take such action as may be appropriate under all the circumstances. Except in cases which involve the sanction of expulsion, as defined in Section 7.02 of these policies, rules, and regulations, the decision of the President shall be final.

7.05 Review by the Board of Regents - The Board of Regents may, from time to time, require from the presidents, or any of them, reports on disciplinary actions or proceedings over a period of time or as to any specific case or cases. Such reports shall be in such form as the Board of Regents may require.

In disciplinary cases where the institutional sanction is expulsion, the Board of Regents may, pursuant to such procedures as it may specify, grant an appeal from the disciplinary action of any President on the record of the case submitted and on leave of the Board of Regents first obtained. A student desiring to appeal the sanction of expulsion must, within three working days, indicate to

the President in writing an intent to appeal the decision to the Board of Regents. A written petition of appeal must be filed with the Chancellor of the Board of Regents within fifteen days of the institutional President's decision. If the Board of Regents determines that the petition will not be heard, the decision of the President of the institution is affirmed and sanctions imposed therein shall be effective upon the President's receipt of the statement of denial.

If the appeal is granted, the sanction imposed by the President's decision shall be stayed until the Board of Regents makes a final decision after a review of the case. In the event the decision of the President is affirmed after such review, the person appealing and the President shall be notified by certified mail and the sanction shall be effective immediately upon receipt by the President of the decision rendered by the Board of Regents.

In reviewing student appeals involving the sanction of expulsion, the Board of Regents will review all relevant information and records of applicable institutional disciplinary proceedings to ensure that due process has been afforded. In any case of any review of disciplinary action, the Board of Regents may take such action as it deems reasonable and proper in all the circumstances and in answer to all its responsibilities under the law.

Adopted: West Virginia Board of Regents
July 13, 1982

Revised: November 13, 1984

Revised: April 2, 1985

**TITLE 128
INTERPRETIVE RULES
WEST VIRGINIA BOARD OF TRUSTEES**

**SERIES 57
STUDENT RIGHTS AND RESPONSIBILITIES**

§128-57-1. General.

1.1. Scope. -- Policies, rules and regulations regarding student rights, responsibilities and conduct in West Virginia State Universities and Colleges.

1.2. Authority. -- W. Va. Code §18-26-8

1.3. Filing Date. -- April 10, 1985

1.4. Effective Date. -- July 1, 1985

1.5. Repeal of former rule. -- Revises and replaces Policy Bulletin No. 57, effective November 13, 1984.

§128-57-2. Purpose.

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(a) To establish a general policy on student life, including a statement on student rights and responsibilities, at the state colleges and universities.

(b) To identify behavioral expectations of students and certain prohibited acts by students at the state colleges and universities.

(c) To prescribe penalties and sanctions for such prohibited conduct.

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(e) To prescribe disciplinary actions and proceedings to be taken in cases of the violations of these policies, rules and regulations.

2.2 Effective Date - These policies, rules and regulations are effective immediately inasmuch as they cover any general or emergency situation that might arise at any State college or university, and they supersede any existing policies, rules and regulations that are in conflict with these policies, rules, and regulations.

2.3. Filing Date - These policies, rules, and regulations were filed in the Office of the Secretary of State of West Virginia on the Seventh (7) day of August 1970.

§128-57-3. Definitions.

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3.8. Faculty - Those employees of the Board of Trustees who are assigned to teaching or research or service functions at an institution, and who hold academic rank.

3.9. Staff - Those employees of the Board of Trustees who are assigned to teaching or research or service functions at an institution, and who are not members of the faculty.

3.10. Student - Any person who has been admitted to an institution to pursue a course of study, research, or service, who is currently engaged in an institutionally sponsored activity, and who has some right or privilege to be on the campus or in the facilities of the institution, or to use the same, in connection with study, research, or service, or who yet has some right or privilege to receive some benefit or recognition or certification from the institution, under the rules, regulations, or policies of the Board of Trustees or the institution.

3.11. Member of the institutional community - Any officer, administrator, faculty member, staff member, employee, student or of at an institution, member of the institutional Board of Advisors, as well as any person authorized to participate in an institutional activity at the time applicable.

§128-57-4. Policies Regarding Student Rights and Responsibilities.

4.1. The submission of an application for admission to an institution represents an optional and voluntary decision on the part of the prospective student to partake of the program and privileges offered by the institution pursuant to the policies, rules and regulations of the Board of Trustees and the institution. Institutional approval of that application, in turn, represents the extension of a right or privilege to join the institutional community and to remain a part of it so long as the student fulfills the academic and the behavioral expectations that are set forth in the policies, rules and regulations of the Board of Trustees and the institution.

4.2. Freedom of expression and assembly - The student enjoys the essential freedoms of scholarship and inquiry central to all institutions of higher education. In exercising these freedoms the student has certain rights and responsibilities, including, but not limited to, the following:

(a) To have access to campus resources and facilities;

(b) To espouse causes;

(c) To inquire, discuss, listen to and evaluate;

(d) To listen to any person through the invitation of organizations recognized by the institution;

(e) To have a free and independent student press which adheres to the canons of responsible journalism;

(f) To not violate the rights of others in matters of expressions and assembly;

(g) To abide by policies, rules and regulations of the Board of Trustees and the institution and federal, state, and local statutes and ordinances pertaining to freedom of expression and assembly.

4.3. Freedom of association - Students may organize whatever associations they deem desirable and are entitled to affiliate with any group or organization for which they meet membership qualifications. However, institutional recognition of student organizations shall be limited to those whose purposes comport with the educational mission of the institution.

4.4. Right to privacy - The student is entitled to the same safe-guards of the rights and freedoms of citizenship as are afforded those outside the academic community, including, but not limited to, the following:

(a) Privileged communication on a one-to-one relationship with faculty, administrators, counselors and other institutional functionaries;

(b) Respect for personality, including freedom from unreasonable and unauthorized searches of student living quarters;

(c) Confidentiality of academic and disciplinary records;

(d) Legitimate evaluations made from student records.

4.5. Responsibilities of citizenship - The student is expected, as are all citizens, to respect, and abide by, local ordinances and state and federal statutes, both on and off the campus. As a member of the educational community, the student is expected to abide by the institution's code of student conduct which clarifies those behavioral standards considered essential to its educational mission.

4.6. Disciplinary proceedings - Disciplinary proceedings for students accused of committing offenses must be consistent with such constitutional provisions guaranteeing due process of law as are applicable to them. In all disciplinary proceedings, the student shall be considered innocent until proven guilty of any charge. Each institution shall have authority for promulgating rules and regulations,

consistent with policies, rules and regulations of the Board of Trustees.

§128-57-5. Standards of Conduct; Rules and Regulations.

5.1. Conduct required in general - All students at the institutions are subject to, and are required to comply with, observe, and obey the following:

(a) The laws of the United States;

(b) The laws of the State of West Virginia;

(c) Local city, county and municipal ordinances;

(d) The policies, rules and regulations of the Board of Trustees and the institution;

(e) The directions and orders of the officers, faculty and staff of the institution who are charged with the administration of institutional affairs on campus.

5.2. Prohibited; disorderly conduct - Any and all students who behave in a disorderly or unlawful manner, such as the actions listed below, but not limited to those listed, in or about institutional property or facilities, are subject to institutional disciplinary action which may result in probation, suspension or expulsion, whether or not there is prosecution for such violations in local, state or federal courts:

(a) Fights;

(b) Assaults or battery;

(c) Public disturbances;

(d) Unlawful assembly;

(e) The violation of any municipal, state or federal law, or the rules and regulations of the Board of Trustees or the institution.

5.3. Prohibited conduct; theft or damage of property - No student shall, individually or by

joining with one or more others, misuse, steal, damage or destroy any institutional property or facilities or the property of any member of the institutional community on or in campuses, property or facilities of an institution. Students involved in any such prohibited actions or conduct shall be subject to institutional disciplinary action which may result in probation, suspension or expulsion, whether or not there is prosecution for such actions or conduct in local, state or federal courts.

5.4. Prohibited conduct; disruption - No student shall, individually or by joining with one or more other persons, do any of the following:

(a) Disrupt or interfere with any institutional activity, program, meeting or operation;

(b) Interfere with the rights of any member of the institutional community;

(c) Injure or threaten to injure, or coerce by bodily harm or restraint or threats thereof or any other means, any member of the institutional community or persons lawfully on the institution's campus, property or facilities;

(d) Seize, hold, commandeer or damage any property or facilities of an institution, or threaten to do so, or refuse to depart from any property or facilities of an institution upon direction, pursuant to policies, rules and regulations of the Board of Trustees or the institution, by an institutional officer, faculty or staff member, or other person authorized by the president.

Students involved in any such action or activities shall be subject to institutional disciplinary action which may result in probation, suspension or expulsion, whether or not there is prosecution for such actions in local, state or federal courts.

5.5. Prohibited conduct; hazing - No student shall, individually, or by joining with one or more other persons, engage in any act of hazing involving another member of the institutional community. The president of each college and

university shall promulgate rules and regulations prohibiting hazing in any form. Such rules and regulations shall include provisions to:

(a) Prohibit any action which subjects a pledge, initiate, or member of a student organization to activities which are personally demeaning or involve a substantial risk of physical injury. This includes both organized rites of initiation and informal activities;

(b) Include the institutional hazing policy in the student handbook, or such other publications which are readily distributed to all students. The institutional policy shall provide that students involved in hazing activities are subject to institutional disciplinary action which may result in the sanctions of suspension or expulsion, whether or not there is prosecution for such actions in local, state or federal courts;

(c) Identify, through student publications and other appropriate mechanisms, the sanctions which apply to student organizations engaged in prohibited hazing activities or prohibited rites of initiation. These sanctions may include, but are not limited to: Denial of the use of institutional facilities, removal of some or all social privileges, removal of institutional recognition, and a recommendation to regional or national headquarters that the organizational charter be revoked. The president of the institution shall take steps to ensure that the chief officer of each student organization is informed at least annually of the institution's hazing policy and the sanctions which may be imposed upon offending organizations;

(d) Ensure that students accused of hazing offenses where the sanctions of suspension or expulsion may result are afforded the opportunity for a disciplinary hearing, as provided in Section 7.4 of these policies, rules and regulations.

5.6. Prohibited conduct; discrimination - No student shall, individually or by joining with one or more other persons, promote or demand action on their part or any other member of the

institutional community that would constitute unlawful discrimination on the basis of race, sex, color, political affiliation, handicap or age. Students involved in any such action or activities shall be subject to institutional disciplinary action which may result in probation, suspension or expulsion, whether or not there is prosecution for such actions in local, state or federal courts.

§128-57-6. Powers, Authority and Duties of the President.

6.1. General powers, authority and duties of the presidents - The chief executive officer of each institution shall be the president. The president shall be responsible for the entire administration of the institution, subject to the control of the Board of Trustees. It shall be the president's duty to attend to and administer the laws of the State of West Virginia which may be applicable on the campus; the policies, rules and regulations of the Board of Trustees; and policies, rules and regulations of the institution. Each such president is hereby vested with authority requisite to that end, subject to the control of the Board of Trustees.

6.2. Powers, authority and duties of the presidents; delegation of authority and responsibility - Any authority, responsibility, or duty granted to or imposed upon such a president by these policies, rules and regulations may be delegated by the president, subject to the control of the Board of Trustees, to another person or persons on the faculty, staff or student body of the institution.

All persons dealing in the matters so delegated by the president shall be required to deal with the persons to whom the president shall have delegated such authority, responsibility or duty and such persons shall be required to deal with the institution or the president through such designees, except on appeal to the president as specified by the president.

6.3. Powers, authority and duties of the president; promulgation of institutional regulations for student discipline - The

president of each institution shall have authority and responsibility, subject to the control of the Board of Trustees, for the discipline of all students at the institution.

The president, with the advice of faculty and students and subject to the control of the Board of Trustees, shall develop, promulgate and use disciplinary regulations and channels at each institution not inconsistent with the policies, rules and regulations of the Board of Trustees.

6.4. Powers, authority and duties of the presidents; activities on, and use of, institutional property or facilities - The use by any person of the property or facilities of the institutions shall be controlled and governed by the policies, rules and regulations of the Board of Trustees.

Regulations governing the use of such property or facilities at a particular institution shall be promulgated by the president thereof, with the advice of faculty and students and shall conform to these policies, rules and regulations and be subject to the control of the Board of Trustees.

6.5. Powers, authority and duties of the presidents; public use of institutional property or facilities and restrictions imposed - Subject to the control of the Board of Trustees, notwithstanding any rule, regulation, policy or express or implied permission for the use of, or presence in or on, the property or facilities of any institution, any person who (a) is not a student presently registered for current classes or course work at the particular institution or is not an employee of the Board of Trustees currently on duty at the institution and (b) by his/her conduct or speech or expressions, causes or, in the opinion of the president of the institution or the president's delegate of authority, may be reasonably expected to cause harm to persons, property or facilities or disruption of, or interference with, any activity of the institution, is no longer authorized to be in or on the property or facilities of the institution. In such instance, the president of such institution, or the president's delegate of authority, shall cause such person to be ejected

from, kept off, and kept out of the property and facilities of the institution. The president or delegate of authority, may take whatever legal or institutional action is necessary to effectuate this authority.

6.6. Powers, authority and duties of the presidents; use of institutional property or facilities; activities which interfere with, disrupt or inhibit institutional operations - The assertion by any person or persons of rights of speech, assembly, press or other expression with the intention to interfere with access to, or use of, the institution's property, facilities, activities, programs, or operations by those properly and regularly using the same is expressly prohibited, any rule, regulation or permission express or implied notwithstanding.

6.7. Powers, authority and duties of the presidents; limitations of assembly and student use of institutional property or facilities - Subject to the control of the Board of Trustees, when, in the judgment of the president of any institution, an assembly is not in the best interests of the institution or the individuals concerned, in that it presents a clear and present danger of harm to persons, property, or facilities or interference with or disruption of activities, such president or his delegate of authority shall prohibit such assembly and shall take measures to prevent harm to persons, property or facilities, or to prevent interference with or disruption of activities, as may be necessary in the circumstances or may be reasonably expected to come into existence.

6.8. Powers, authority and duties of the presidents; limitation of activities and emergency measures - When there has been harm or damage to persons, property or facilities, or when there has been disruption of or interference with institutional activities, or when there has been seizure or occupation of property or facilities by persons no longer authorized, then, subject to the control of the Board of Trustees, when the president of an institution at which such occurrences happen or take place, deems it necessary to end or to control such occurrences and the circumstances caused thereby, that president shall take any or

all of the following actions or other appropriate actions:

(a) Declare a state of emergency to exist on the campus; and

(1) Close down any part of the institution for any length of time, or limit use of certain parts of the campus, property or facilities to certain persons at certain times;

(2) Impose curfews on the presence of persons in or on institutional facilities or property;

(3) Place bans on gatherings of persons at places or times on or in the institution's property or facilities; or

(4) Enlist the aid of any public authority, police or otherwise, as may be necessary to restore order, protect persons, property, health, safety or welfare.

(b) Immediately suspend any student who is found involved in prohibited action or conduct and who is (1) first advised, told or notified that a particular action or conduct is prohibited, and who (2) continues such action or conduct in spite of the warning. Such immediate suspension shall be followed with speedy disciplinary proceedings consistent with these policies, rules and regulations.

(c) See to the enforcement of the laws of the State of West Virginia; the policies, rules and regulations of the Board of Trustees; and the policies, rules and regulations of the institution, including any emergency orders imposed as a result of the state of emergency so declared.

§128-57-7. Disciplinary Action; Proceedings.

7.1. Application to students -Any person who is a student as defined in these policies, rules and regulations shall be subject to disciplinary action by the institution at which he/she is a student if that person is involved on the campus of that institution in any of the actions or conduct prohibited by these policies, rules and regulations, notwithstanding the fact

that at the time the student is also an employee of the Board of Trustees. In taking disciplinary action against a student, as defined herein, an institution may act to remove any status of such a person or to revoke or remove any right or privilege of such person as a student, or to withhold, remove, or cancel any benefit, recognition or certification, including the conferring of a degree, which such a person might yet not have received from the institution.

7.2. Sanctions in disciplinary action - The following sanctions may be imposed upon students as a result of disciplinary actions by an institution:

(a) Probation - exclusion from participation in certain institutional activities, property or facilities for a definite stated period of time, and may be conditioned upon compliance with policies, rules and regulations, or specified required activity during the period of probation.

(b) Suspension - exclusion from all institutional activities for a definite stated period of time up to one (1) academic year, and any condition on resumption of activities, if any, also may be imposed.

(c) Expulsion - termination of all student status, including any remaining right or privilege to receive some benefit or recognition or certification, and conditions for readmission, if any, may be stated in the order.

Normally, students facing suspension or expulsion from the institution will be entitled to a hearing prior to the imposition of the sanction. However, a student may be temporarily suspended pending final action on the charges when the student's continued presence on campus would constitute a potential for serious harm to himself/herself or to the safety of other members of the institutional community. Such temporary suspension shall be followed with speedy disciplinary proceedings consistent with these policies, rules and regulations.

Sanctions of lesser severity, including restitution, may be imposed in any case, at the discretion of the president of the institution.

Each institution shall identify in its student handbook, or other similar publication, the offenses for which a student who is found guilty may be subject to the sanctions of suspension or expulsion.

A sanction of suspension or expulsion imposed by a college or university under the jurisdiction of the Board of Trustees shall apply to the person sanctioned not only at the institution where the sanction was imposed, but shall also be effective at all colleges and universities under the jurisdiction of the Board of Trustees. A student who is expelled from one (1) institution in the Board of Trustees' system may not be considered for admission to another institution in the system until one (1) year has elapsed after the student has been expelled.

When a sanction is scheduled for a particular semester and the time lapse during an appeal process makes enforcement in the designated semester impossible, then the sanction shall be applied to the semester in progress at the time of completion of the appeal. In the event that sanction cannot be implemented during that semester, then it shall be applied during the next regular semester, except that if the student has completed the course of study during the pendency of the appeal, the sanctions, where possible, shall be carried out retroactively to affect the grades and records of that student during the semester designated in the original sanction. In any event, the accused student may not be graduated during the process of appeal.

7.3. General requirements for disciplinary channels - Rules and regulations establishing disciplinary channels at the institutions, promulgated pursuant to Sections 4.5 and 6.3 of these rules, or any of the policies, rules and regulations, shall provide, among other things, at the least for the following:

(a) There shall be a hearing board whose members shall be members of the institutional

community, including student and faculty representatives, and whose number shall be at least three (3), and, in any event, on any panel hearing a case, shall be odd.

(b) The hearing board shall have jurisdiction of cases involving the alleged violations of Sections 5.2, 5.3, 5.4, 5.5 and 5.6 of these policies, rules and regulations, and of cases involving students suspended pursuant to Section 6.8(b) of these policies, rules and regulations.

(c) The jurisdiction and authority of the hearing board shall be, in cases of disciplinary action against students:

(1) To hear evidence;

(2) To make findings of fact from the evidence presented;

(3) To make recommendations to the president of the institution, based upon such findings of fact, as to the disposition of the disciplinary action, including sanctions to be imposed, if any; and

(4) To refer for hearing to a lesser disciplinary channel in cases not involving potential suspension or expulsion. (In lieu of calling together the entire hearing board to decide on referrals, a referral board, including a faculty representative and a student representative selected from the hearing board, may decide the level of hearing by establishing hearing levels for categories of disciplinary infractions or by considering individual referral cases).

(d) The hearing board shall have such appellate jurisdiction as may be appropriate to the institution, from the determinations and recommendations of any lesser disciplinary channel.

(e) The student may then object or take exception to the recommendations of the hearing board under such procedures as the president may deem appropriate.

7.4. Procedural standards in disciplinary proceedings - In any disciplinary proceedings before a hearing board established pursuant to Section 7.3 of these rules brought against a student for alleged misconduct, actions, or behavior for which sanctions of suspension or expulsion may be imposed, the following procedural standards shall be observed.

(a) Written charges of violation shall be presented to the accused student which shall include at least:

(1) A statement of the policy, rule or regulation which allegedly has been violated;

(2) A statement of the facts and evidence to be presented in support of the charges made with sufficient clarity to reasonably disclose the time and place of the occurrence and the actions or behavior complained of;

(3) A statement that a hearing will be held before the hearing board on the charges, together with notice of the date, time and place of the hearing; and

(4) In cases involving potential suspension or expulsion, as specified in institutional policies, the student must be informed of his/her right to have legal counsel present at the hearing (students retain attorneys in such cases at their own expense and must notify the hearing board at least forty-eight (48) hours prior to the hearing if the attorney will be present at the proceedings).

It is expressly provided, however, That such written charges shall not be fatally defective so as to prevent the set hearing or to require further amplification if such minimum requirements are met reasonably and in good conscience at the discretion of the hearing board.

(b) Said written charges shall be served upon the student charged by one (1) of the following means:

(1) Handing a copy to the student in person, if he/she can be found, with reasonable diligence in the town where the institution is located and the hearing is to take place; or

(2) Mailing, via certified mail, a copy to the student at the residence used while in attendance at the institution, as last noted on his/her official records at the institution; or

(3) If the student is not presently registered at the institution, or in any event, by mailing, via certified mail, a copy to his/her last known permanent or home residence as disclosed by official records at the institution.

It is expressly provided, however, that such service of charges and notice of hearing shall not be defective if the student shall have hidden, refused mail, or shall have failed to notify the institution of his/her current address while attending the institution or of the current permanent home address, and the hearing may proceed without hindrance or delay.

(c) A hearing shall be held at the date, time and place specified (unless postponed by the hearing board for good cause shown) and shall provide the student at least five (5) days notice from the serving of the charges (unless such notice is waived by the student). The hearing shall be conducted in such a manner as to do substantial justice and shall include at least the following:

(1) The accused student has the right to have an advisor. Such an advisor may be a parent or guardian, a student at the institution, or a member of the faculty or staff of the institution. An advisor may consult with the accused student, but may not speak on behalf of the student or otherwise participate directly in the proceedings, unless given specific permission to do so by the hearing board. In cases involving the potential for suspension or expulsion, legal counsel may be present as specified in Section 7.4(a)(4) of this policy. Legal counsel may serve in an advisory capacity to the accused student in such cases. However, legal counsel may not speak on behalf of the student or otherwise participate directly in the

proceedings. The college or university may request legal counsel through the Office of the Chancellor. Counsel retained by the institution may participate only in an advisory capacity and may not speak on behalf of the institution or otherwise participate directly in the proceedings;

(2) All material evidence may be presented subject to the right of cross-examination of the witnesses;

(3) There shall be a complete and accurate record of the hearing. In the case of an appeal, a written transcript may be required;

(4) In any event, the accused student shall be entitled to be present throughout the presentation of evidence, testimony of witnesses, and arguments of parties; to know the identity of and content of testimony of the witnesses against him and have them present at the hearing at appropriate times; and to present witnesses and any evidence on his behalf as may be relevant and material to the case.

(d) No recommendation for the imposition of sanctions may be based solely upon the failure of the accused student to answer charges or to appear at the hearing. In such a case, the evidence in support of the charges shall be presented and considered. And, in any event, all findings of fact and recommendations shall be based solely upon the evidence in the case as a whole.

(e) After the hearing, the hearing board shall make findings of fact and recommendations for the disposition of the case and sanctions to be imposed, if any, and forward the same to the president of the institution. Within ten (10) working days following receipt of the hearing board recommendations, the president shall review the facts of the case and take such action as may be appropriate under all the circumstances. Except in cases which involve the sanction of expulsion, as defined in Section 7.2 of these policies, rules and regulations, the decision of the president shall be final.

7.5. Review by the Board of Trustees - The Board of Trustees may, from time to time, require from the presidents, or any of them, reports on disciplinary actions or proceedings over a period of time or as to any specific case or cases. Such reports shall be in such form as the Board of Trustees may require.

In disciplinary cases where the institutional sanction is expulsion, the Board of Trustees may, pursuant to such procedures as it may specify, grant an appeal from the disciplinary action of any President on the record of the case submitted and on leave of the Board of Trustees first obtained. A student desiring to appeal the sanction of expulsion must, within three (3) working days, indicate to the president in writing an intent to appeal the decision to the Board of Trustees. A written petition of appeal must be filed with the Chancellor of the Board of Trustees within fifteen (15) days of the institutional president's decision. If the Board of Trustees determines that the petition will not be heard, the decision of the president of the institution is affirmed and sanctions imposed therein shall be effective upon the president's receipt of the statement of denial.

If the appeal is granted, the sanction imposed by the president's decision shall be stayed until the Board of Trustees makes a final decision after a review of the case. In the event the decision of the president is affirmed after such review, the person appealing and the president shall be notified by certified mail and the sanction shall be effective immediately upon receipt by the president of the decision rendered by the Board of Trustees.

In reviewing student appeals involving the sanction of expulsion, the Board of Trustees will review all relevant information and records of applicable institutional disciplinary proceedings to ensure that due process has been afforded. In any case of any review of disciplinary action, the Board of Trustees may take such action as it deems reasonable and proper in all the circumstances and in answer to all its responsibilities under the law.