



**DEPARTMENT OF EDUCATION AND THE ARTS**  
**Office of the Secretary**

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**Cecil H. Underwood**  
Governor

**David R. Ice**  
Acting Cabinet Secretary

July 11, 1997

The Honorable Ken Hechler  
Secretary of State  
State Capitol Complex  
Charleston, West Virginia 25305

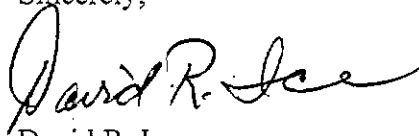
Dear Secretary Hechler:

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the promulgation of the following procedural rule of the Board of Trustees of the University of WV System:

Title 128, Series 36: Academic Freedom, Professional Responsibility, Promotion and Tenure (amended).

A copy of the rule is attached.

Sincerely,



David R. Ice  
Acting Cabinet Secretary

DRI: sbw

Attachment

## **SUMMARY**

**TITLE 128  
PROCEDURAL RULES  
UNIVERSITY SYSTEM OF WEST VIRGINIA  
BOARD OF TRUSTEES  
SERIES 36**

**TITLE:       ACADEMIC FREEDOM, PROFESSIONAL RESPONSIBILITY,  
              PROMOTION, AND TENURE**

**SUMMARY:**

This rule sets forth definitions and procedures regarding academic freedom and responsibility, appointment, promotion, tenure and nonreappointment or dismissal of faculty, and grievance procedure for other matters relating to faculty of institutions in the University System of West Virginia.

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: Academic Freedom, Professional Responsibility, Promotion and Tenure

Type of Rule             Legislative             Interpretive        X   Procedural

Agency University System of West Virginia Board of Trustees

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense	NA	NA	NA	NA	NA
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

There are no costs associated with implementation of this rule.

3. Objectives of these rules

To establish procedures regarding academic freedom and responsibility, appointment, promotion, tenure, and non-reappointment of faculty, and grievance procedure matters relating to faculty.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large

None

Date: May 7, 1997



Signature of Agency Head or Authorized Representative

TITLE 128  
PROCEDURAL RULES  
UNIVERSITY SYSTEM OF WEST VIRGINIA  
BOARD OF TRUSTEES  
SERIES 36

FILED

AUG 15 11 02 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE:           **ACADEMIC FREEDOM, PROFESSIONAL RESPONSIBILITY,  
PROMOTION, AND TENURE, ETC.**

**SECTION 1.           GENERAL**

- 1.1    Scope – Rule regarding academic freedom and responsibility, appointment, promotion, tenure and nonreappointment or dismissal of faculty, and grievance procedure for other matters relating to faculty, ~~dated March 5, 1981, for faculty in the state system of higher education.~~ All academic appointments made after the effective date hereof shall be in conformity with this statement.
- 1.2    Authority - West Virginia Code §18-B-1-6
- 1.3    Filing Date - ~~April 3, 1992~~
- 1.4    Effective Date - ~~May 4, 1992~~
- 1.5    Repeal of Former Rule - Repeals and Replaces Series No. 36 dated May 4, 1992.

**SECTION 2.        ACADEMIC FREEDOM and PROFESSIONAL RESPONSIBILITY**

- 2.1    Academic freedom at University of West Virginia System institutions is necessary to enable the institutions to perform their societal obligations as established by the Legislature. The Board of Trustees recognizes that the vigilant protection of constitutional freedoms is nowhere more vital than in the institutions under its jurisdiction. Faculty members and students must always remain free to inquire, study, and evaluate.
- 2.2    Through the exercise of academic freedom, members of the academic community freely study, discuss, investigate, teach, conduct research, and publish, depending upon their particular role at the institution. To all of those members of the academic community who enjoy academic freedom, there are, commensurate with such freedom, certain responsibilities. All faculty members shall be entitled to full freedom in research and in the publication of the results of such research, subject to the adequate performance of their other academic duties, which may include designated **instruction**, research, extension service, and other professional duties. **Activity for pecuniary return that interferes**

with one's obligations to the institution should be based upon an understanding, reached before the work is performed, with the authorities of the institution. Further, each faculty member is entitled to freedom in the classroom in discussing the subject taught. In addition, when faculty members speak or write as citizens outside the institution, they shall be free from institutional censorship or discipline.

- 2.3 The concept of academic freedom is accompanied by an equally important concept of academic responsibility. The faculty member at a University ~~System~~ of West Virginia ~~System~~ institution is a citizen, a member of a learned profession, and a representative of an educational institution. As such, a faculty member, together with all other members of the academic community, has the responsibility for protecting, defending, and promoting individual academic freedom for all members of the community. The faculty member is responsible also as a teacher for striving to speak with accuracy and with respect for the similar rights and responsibilities of others. In speaking only as an individual or for a limited group, the faculty member should not imply or claim to be a spokesperson for the institution in which he or she holds an appointment.
- 2.4 In addition to meeting the primary responsibilities of addressing institutional missions in teaching, research, and service, all faculty have an obligation to foster the quality, viability, and necessity of their programs (as defined in Administrative Bulletin No. 30). The financial stability of a program and recruitment of an adequate number of students depends in part on the faculty. The common goal of quality must be nurtured and responsibility for it shared by all. Integrity, objectivity, and service to the purposes and missions of the institution are expected.
- 2.5 Faculty interests and skills change, disciplines evolve, and new professions or fields of study emerge. All faculty members are responsible for remaining current in their disciplines. All are encouraged to explore opportunities for further developing a versatile range of knowledge and skills which are important to the institution. Through individual initiative and faculty development programs, faculty are encouraged to grow in competency in their own disciplines and strengthen their interests in related fields.
- 2.6 As members of an academic community, faculty also are expected to participate (as delineated in Administrative Bulletin No. 30) in decisions concerning programs and in program review processes.
- 2.7 For purposes of this rule, Marshall University, West Virginia School of Osteopathic Medicine, West Virginia University, Potomac State College of West Virginia University, West Virginia University at Parkersburg, and West Virginia University Institute of Technology are considered separate institutions.

### **SECTION 3. APPOINTMENT OF FACULTY; RANKS AND DEFINITIONS**

3.1 The faculty at any institution under the jurisdiction of the Board of Trustees shall be those appointees of the institution's president **or designee** as reported to the Board of Trustees. The faculty are those ~~people~~ so designated by the institution's president and may include, but are not limited to, such professional personnel as librarians and those involved in off-campus academic activities.

3.2 Faculty fall into one of the ~~three~~ **five** following classifications:

3.2.1 Tenured: Those faculty members who have attained the tenure status by official action of the board or **the president, or designee** and reported to the Board. **Normally, tenured appointments are full-time (1.00 FTE or the equivalent, as determined by the institution) for the academic year.**

3.2.1.1 Under special circumstances, if requested by the faculty member and approved by the president or designee, a full-time tenured appointment may be converted to a part-time tenured appointment for a specified time period, normally not to exceed one calendar year. At the conclusion of the approved time period or an approved extension, the faculty member will return to a full-time tenured appointment, or if the faculty member chooses not to return to a full-time appointment, the faculty member's employment will cease. This section does not apply to actions associated with phased retirement programs.

3.2.2 **Tenure-track (Probationary):** Those faculty members who have been appointed by the president **or designee** on a full-time basis **(1.00 FTE or the equivalent, as determined by the institution)** and have been designated by ~~the president~~ as being in a tenure-track position.

3.2.2.1 Under special circumstances, if requested by the faculty member and approved by the president or designee, a full-time tenure-track appointment may be converted to a part-time tenure-track appointment for a specified time period, not to exceed one calendar year. At the conclusion of that time period, the faculty member will return to a full-time tenure-track appointment, or if the faculty member chooses not to return to a full-time tenure-track appointment the faculty member's employment will cease. Time spent in a part-time tenure-track appointment will not apply to the calculation of the years of service for the purposes of tenure nor will it result in any de facto award of tenure.

3.2.3 **Clinical-Track:** Those faculty members who have been appointed by

the president or designee and have been designated as *being in a clinical-track position*. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.

**3.2.4 Librarian-Track:** Those faculty members who have been appointed by the president or designee and have been designated as being in a librarian-track position. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.

**3.2.5 Temporary:** Those faculty members who have not been appointed in a **tenure-track probationary, clinical-track, librarian-track, or tenured** status. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.

**3.3** Faculty appointed to tenured or **tenure-track probationary** positions at any institution shall be appointed in one of the following ranks:

3.3.1 Professor;

3.3.2 Associate Professor;

3.3.3 Assistant Professor; or

3.3.4 Instructor

**3.4** Faculty appointed to **clinical-track** positions at any institution may be appointed to one of the following ranks:

**3.4.1** Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN)

**3.4.2** Associate Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN)

**3.4.3** Assistant Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN)

**3.4.4** Instructor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN)

**3.5** Faculty appointed to **librarian-track** positions at any institution may be appointed to one of the following ranks:

**3.5.1** Librarian or Professor/Librarian

**3.5.2** Associate Librarian or Associate Professor/Librarian

**3.5.3** Assistant Librarian or Assistant Professor/Librarian

### 3.5.4 Staff Librarian or Instructor/Librarian

- 3.6 Clinical-track and librarian-track faculty hold appointments which are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. Clinical-track and librarian-track faculty appointments are only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.
- 3.7 Additional ranks are permitted at West Virginia University through use of the title prefix designation "extension" as applicable to describe the connection or function; such additional ranks are excluded from and in addition to ranks covered by the provisions of the West Virginia Code.
- 3.8 Other appropriate titles which more accurately indicate the nature of the position may be used upon the recommendation of the president of an institution or designee, subject to approval by the Board of Trustees.
- 3.9 Persons assigned full-time or part-time to administrative or staff duties at any institution may (if qualified) be appointed to, or may retain, one (1) of the foregoing faculty ranks in addition to any administrative or staff title **following consultation with appropriate academic units**. Such persons will be informed in writing at the time of the appointment whether the faculty rank is as a tenured member, ~~tenure-track probationary member~~, **clinical-track, librarian-track**, or temporary member of the faculty. Administrative or staff personnel who are not appointed to a faculty position are not faculty and therefore are not entitled to the protections provided by this rule.
- 3.10 **In addition to clinical-track and librarian-track faculty, other** faculty hold temporary appointments which may be part-time or full-time and are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. **Temporary appointments shall have one of the following titles:**
- 3.10.1 Any of the faculty ranks but designated visiting, research, clinical, extension or adjunct, as applicable to describe the connection or function;
- 3.10.2 ~~Temporary~~-Lecturer; or **senior lecturer**.
- 3.10.3 Assistant, designated as graduate, research, clinical, or adjunct, as applicable to describe the connection or function.
- 3.11 Temporary full-time **(1.00 FTE or the equivalent, as determined by the institution)** faculty appointments may be used only if one or more of the following conditions prevail:
- 3.11.1 The position is funded by a grant, contract, or other source that is

not a part of the regular and on-going source of operational funding;

- 3.11.2 The appointment is for the temporary replacement of an individual on sabbatical or other leave of absence. Such appointments **are** outside probationary status, **are subject to annual renewal, and** may not exceed three years. ~~and are subject to annual renewal.~~
- 3.11.3 The appointment is for the purpose of filling an essential teaching post immediately, pending a permanent appointment through a regular search and screening process. Such appointments **are** outside **tenure-track** probationary status, **are subject to annual renewal, and** may not exceed three years. ~~and are subject to annual renewal.~~
- ~~3.10.4 The appointee is beyond retirement age, according to current Board of Trustees' policy;~~
- 3.11.45 The position is temporary to meet transient instructional needs, to maintain sufficient instructional flexibility in order to respond to changing demand for courses taught, or to meet other institutional needs. The appointee, **who must have appropriate professional qualifications**, is to be so notified at the time of the appointment. Such appointments **are** outside **tenure-track** probationary status, **are subject to annual renewal, and** may not exceed three years **without the written approval, to a maximum of six years, of the president or designee.**
- 3.11.56 The appointee is granted a primary appointment as an administrator or to perform other noninstructional duties, with a secondary appointment that is instructional in character. Any faculty rank or teaching would be considered temporary, renewable on an annual basis. The appointee must be notified in writing of the status of any faculty rank.
- 3.11.6 **Appointment or reappointment to a temporary full-time faculty position shall create no right or expectation of continued appointment beyond the one-year period of appointment or reappointment.**
- 3.912 The president of an institution or **designee** shall make all tenured, **tenure-track**, ~~probationary~~, **clinical-track**, **librarian-track**, and temporary faculty appointments at the institution after consultation with appropriate faculty and other collegiate units, and report those actions to the Board of Trustees.
- 3.163 Every faculty appointment at any institution shall be for one (1) fiscal year, or part thereof, in accordance with and in compliance with the annual budget of the Board of Trustees, or supplementary actions thereto, as provided by law.

- 3.144 Every such appointment shall be in writing and a copy of the appointing document shall be furnished to the person appointed. Such document shall contain the terms and conditions of the appointment.

#### SECTION 4. FACULTY -- TYPES AND CONDITIONS OF APPOINTMENT

- 4.1 Full-time appointments to the faculty of an institution, other than those classified as **clinical-track, librarian-track, or temporary**, shall be either tenured or **tenure-track prebationary**.
- 4.2 All **clinical-track, librarian-track and other** temporary appointments, as defined in Section 3 of these rules shall be neither tenured nor **tenure-track prebationary**, but shall be appointments only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.
- 4.3 The appointment of a person to a full-time position at an institution is made subject to the following conditions:
- 4.3.1 The appointee shall render full-time service to the institution to which appointed. Outside activities, except the practice of medicine and dentistry which is restricted below in subsection 4.3.2, shall not be restricted unless such activities or employment interfere with the adequate performance of academic duties. The administration of each institution shall establish a program of periodic review of outside services of appointees to guide faculty members.
- 4.3.2 Full-time faculty appointments assigned to respective dental or medical schools will render dental and medical patient services only at facilities affiliated with their assigned institution, or at such other locations or facilities as may be authorized in their annual notice of appointment, or as otherwise approved in writing by the dean **and** ~~or~~ by the president **or designee**.
- 4.3.2.1 Fees for professional patient related services rendered by full-time medical and dental faculty appointees shall be billed, collected and expended in accordance with the bylaws of the faculty practice plan for their respective institution, or through such other billing and collection mechanism as may be provided for in the faculty member's annual notice of appointment, or as otherwise approved in writing by the dean ~~or~~ **and** by the president **or designee**.
- 4.3.2.2 Fees for professional services not directly related to patient services including, but not limited to, royalties, honoraria, legal actions where no patient services have been rendered, or such other similar sources as may be approved in writing by the dean ~~or~~ **and** by the president **or**

**designee** are permitted as individual income to the individual faculty member.

4.3.3 If outside employment or service interferes with the performance of the regular institutional duties of the appointee, the institution has a right to make such adjustments in the compensation paid to such appointee as are warranted by the appointee's services lost to the institution, and by the appointee's use of institutional equipment and materials.

4.4 If the status of a faculty member changes from temporary, **clinical-track**, or **librarian-track** to **tenure-track probationary**, the time spent at the institution may, at the discretion of the president or **designee**, be counted as part of the **tenure-track probationary** period.

## SECTION 5. JOINT INSTITUTIONAL APPOINTMENTS

5.1 Faculty members may be appointed to perform academic duties at two or more institutions **in the Board of Trustees or and Board of Directors systems**, which duties may include teaching, research, counseling, or other services. For administrative purposes, one institution shall be designated the faculty member's "home institution," which institution shall be responsible for granting promotions, raises in salary, and tenure: Provided, however, that when cause therefore shall occur, appropriate counseling, disciplinary action, and the like shall be the responsibility of the institution where the occurrence arose.

5.2 The conditions and the details of the faculty member's joint appointment, including the designation of the "home institution" and any other arrangements, shall be specified in the agreement between the faculty member and the presidents of the institutions sharing the faculty member's services. A joint appointment will be made only with consent of the faculty member.

5.3 Full-time faculty members appointed under joint or contractual appointments shall continue to be considered full-time employees of the "home institution."

## SECTION 6. PROMOTION IN RANK

6.1 Within the following framework, each president or **designee** shall establish, in cooperation with the faculty or duly-elected representatives of the faculty, guidelines and criteria for promotion in rank:

6.1.1 There shall be demonstrated evidence that promotion is based upon a wide range of criteria, established by the institution in conformance with this document and appropriate to the mission of the institution. Examples appropriate to some institutions might be: Excellence in teaching; **publications and research**; accessibility to students; **adherence to professional standards of conduct**; professional and scholarly activities and recognition; ~~significant service to the institution community;~~

**effective service to the institution, college, or department;** experience in higher education and at the institution; possession of the doctorate, special competence, or the highest earned degree appropriate to the teaching field; ~~publications and research; potential for continued~~ professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to promotion shall rest with the institution.

6.1.2 There shall be demonstrated evidence that, in the process of making evaluations for promotions there is participation of persons from several different groups, such as: peers from within and without the particular unit of the institution, supervisory administrative personnel such as the department/division chairperson and the dean, and students.

6.1.3 There shall be no practice of granting promotion routinely or because of length of service, or of denying promotion capriciously.

6.1.4 The institution shall provide copies of its general guidelines and criteria for promotion to the Board of Trustees and shall make available such guidelines and criteria to its faculty.

6.2 Promotion shall not be granted automatically, but shall result from action by the president of the institution or **designee** following consultation with the appropriate academic units.

## **SECTION 7. FACULTY RESIGNATIONS.**

7.1 A faculty member desiring to terminate an existing appointment during or at the end of the academic year, or to decline reappointment, shall give notice in writing at the earliest opportunity. Professional ethics should dictate due consideration of the institution's need to have a full complement of faculty throughout the academic year.

## **SECTION 8. TENURE**

8.1 Tenure is designed to ensure academic freedom and to provide professional stability for the experienced faculty member. It is a means of protection against the capricious dismissal of an individual who has served faithfully and well in the academic community. Continuous self-evaluation, as well as regular evaluation by peer and administrative personnel, is essential to the viability of the tenure system. Tenure should never be permitted to mask irresponsibility, mediocrity, or deliberate refusal to meet academic requirements or professional responsibilities. Tenure applies to those faculty members who qualify for it and is a means of making the teaching and research profession attractive to persons of ability. There shall be demonstrated evidence that tenure is based upon a wide range of criteria such as: excellence in teaching; **publications and research;** accessibility to students; **adherence to professional standards of conduct;** professional and scholarly activity and recognition; ~~significant service~~

~~to the college community~~ **effective service to the institution, college or department**; experience in higher education and at the institution; possession of the doctorate, special competence, or the highest earned degree appropriate to the teaching field; ~~publications and research; potential for continued~~ professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to tenure shall rest with the institution.

- 8.2 In making tenure decisions, careful consideration shall be given to the tenure profile of the institution, projected enrollment patterns, staffing needs of the institution, current and projected mission of each department/division, specific academic competence of the faculty member, and preservation of opportunities for infusion of new talent. The institution, while not maintaining "Tenure Quotas," shall be mindful of the dangers of losing internal flexibility and institutional accountability to the citizens of the State as the result of an overly tenured faculty. Tenure may be granted only to **faculty** ~~people~~ in positions funded by monies under the Board of Trustees' control.
- 8.3 Tenure shall not be granted automatically, or for years of service, but shall result from action by the president of the institution **or designee** following consultation with appropriate academic units.
- 8.4 Tenure may be granted at the time of appointment by the president **or designee, following consultation with appropriate academic units..** ~~In the case of probationary appointees, tenure may be attained only by faculty who hold the rank of Assistant Professor or above.~~
- 8.5 **Tenure may be attained only by faculty who hold the rank of Assistant Professor or above.**

## **SECTION 9. TENURE-TRACK PROBATIONARY STATUS**

- 9.1 When a full-time faculty member is appointed on other than a **clinical-track, librarian-track**, temporary or tenured basis in any of the institutions of higher education under the jurisdiction of the Board of Trustees the appointment shall be ~~probationary~~ **tenure-track**.
- 9.2 During the ~~probationary~~ **tenure-track** period, the terms and conditions of every reappointment shall be stated in writing, with a copy of the agreement furnished the individual concerned ~~within fifteen days~~ following receipt of the Board of Trustees' budgetary allocations and guidelines.
- 9.3 The maximum period of ~~probation~~ **tenure-track status** shall not exceed seven years. Before completing the sixth year of a ~~probationary~~ **tenure-track** appointment, any nontenured faculty member shall be given written notice of tenure, or offered a one year written terminal contract of employment. During the ~~probationary~~ **tenure-track** period, faculty members may be granted tenured appointment before the sixth year of service, such appointment to be based upon criteria established by the institution and copies provided to the Board of

Trustees.

- 9.4 During the ~~probationary~~ **tenure-track** period, contracts shall be issued on a year-to-year basis, and appointments may be terminated at the end of the contract year. During said ~~probationary~~ **tenure-track** period, notices of nonreappointment may be issued for any reason that is not arbitrary, capricious, or without factual basis. Any documented information relating to the decision for nonretention or dismissal shall be provided promptly to the faculty member upon request.
- 9.5 After the decision regarding retention has been made by a president **or designee**, he or she shall notify the ~~probationary~~ **tenure-track faculty member** of the decision as soon as practicable. In cases of nonretention of faculty who began service at the start of the fall term, formal notification shall be given:
- 9.5.1 Not later than March 1 of the first academic year of service.
- 9.5.2 Not later than December 15 of the second academic year of service; and
- 9.5.3 At least one year before the expiration of an appointment after two or more years of service in the institution.
- 9.6 Faculty appointed at times other than the beginning of the academic year may ~~elect to~~ have those periods of appointment, equal to or greater than half an academic year, considered as full year for tenure purposes only. ~~Probationary~~ **Tenure-track** appointments for less than half an academic year ~~or less~~ may not be considered time in probationary status. Failure to provide timely notice of nonretention to ~~probationary~~ **tenure-track** faculty would lead to renewal of appointment for an additional year, but not prejudice further continuation after that additional year.
- 9.7 Following receipt of the notice of nonretention, the faculty member may appeal such nonretention decision by requesting a statement of reasons and then ~~requesting a hearing before the institutional hearing committee, filing a grievance~~ as provided in Section 14 of these rules. The request for a statement of reasons shall be in writing and mailed to the president **or designee** within ten **working** days of receipt of the notice of nonretention. ~~and the president, within ten days after receiving that request, by certified mail, return receipt requested, shall provide the faculty member with a statement of reasons for nonretention which statement is only for purposes of informing the faculty member of reasons for nonretention prior to the institutional hearing (and therefore is not a statement of reasons referred to in chapter eighteen-B of the Code). Upon receipt of this preliminary statement of reasons, the faculty member may request a hearing before the institutional hearing committee in accordance with Section 14 of these rules and the hearing shall be conducted as provided therein.~~
- ~~9.8 Following receipt of the summary, findings, and recommendation of the institutional hearing committee in accordance with Section 14 of these rules, the president shall issue a decision either setting aside or affirming the earlier issued~~

~~notice of nonretention. If the nonretention is affirmed, upon request of the faculty member in accordance with Code chapter eighteen-B, he or she shall inform the faculty member with a formal statement of the reasons for nonretention issued in accordance with Code, chapter eighteen-B and the faculty member in accordance with Code, chapter eighteen-B, may appeal such decision by requesting a hearing from the Board of Trustees within ten days after receiving the statement of reasons. If the faculty member, following the institutional hearing, fails to request a statement of reasons in accordance with Code, chapter eighteen-B, from the president, the notice of nonretention shall be final.~~

## SECTION 10. FACULTY EVALUATION

- 10.1 All faculty, ~~except tenured faculty,~~ shall receive a yearly written evaluation of performance directly related to responsibilities as defined by the institution.
- ~~10.2 Tenured faculty shall be similarly evaluated at least every third year.~~
- 10.32 Evaluation procedures shall be developed at the institutional level, and a copy sent to the Board of Trustees' and filed in the Central Office. Such procedures must be multidimensional and include criteria such as peer evaluations, student evaluations, and evaluations by immediate supervisors.

## SECTION 11. DISMISSAL

- 11.1 Causes for Dismissal: The dismissal of a faculty member shall be effected only pursuant to the procedures provided in these policies and only for one or more of the following causes:
- 11.1.1 Demonstrated incompetence or dishonesty in the performance of professional duties, **including but not limited to research misconduct;**
  - 11.1.2 ~~Personal~~ Conduct which **directly and** substantially impairs the individual's fulfillment of institutional responsibilities, **including but not limited to verified instances of sexual harassment, or of racial, gender-related, or other discriminatory practices;**
  - 11.1.3 Insubordination by refusal to abide by legitimate reasonable directions of administrators or of the Board of Trustees;
  - 11.1.4 Physical or mental disability **for which no reasonable accommodation can be made, and which makes** making the faculty member unable, within a reasonable degree of medical certainty and by reasonably determined medical opinion, to perform assigned duties; ~~and~~

11.1.5 Substantial and manifest neglect of duty; and

11.1.6 Failure to return at the end of a leave of absence.

11.2 Notice of dismissal for cause - The president of the institution or designee shall institute proceedings by giving the faculty member a written dismissal notice by registered or certified mail, return receipt requested, which dismissal notice shall contain:

11.2.1 Full and complete statements of the charge or charges relied upon; and

11.2.2 A description of the appeal process available to the faculty member;

~~11.2.3 A statement that the faculty member has the right to elect to have the hearing conducted either by an institutional hearing committee or a hearing examiner of the Board of Trustees.~~

~~11.3 Answer and Service - Within thirty days from the date of receipt of dismissal notice, the faculty member may file a written answer to the charges. The period for filing the answer may be extended by the president for good cause. The answer shall also contain a request for an institutional hearing committee, as provided in Section 14 of this rule or a hearing examiner, as provided in Section 15 of this rule. If the faculty member fails to file a timely answer, the notice of dismissal shall be final.~~

11.3 Faculty who refuse to sign or execute an offered annual contract or notice of reappointment by the date indicated by the institution for its execution, and who fail to undertake the duties under such document at a reasonable time, shall be deemed to have abandoned their employment with the institution and any rights to tenure or future appointment. Faculty objecting to terms of such document do not waive their objections to such terms by signing or executing the document.

## SECTION 12. TERMINATION ~~DUE TO~~ BECAUSE OF REDUCTION OR DISCONTINUANCE OF AN EXISTING PROGRAM

12.1 A tenured or tenure-track faculty member's appointment may be terminated because of the reduction or discontinuance of an existing program at the institution as a result of program review, in accordance with the appropriate rule relating to review of academic programs, provided no other program or position requiring equivalent competency exists. If, within two years following the reduction or discontinuance of a program, a position becomes vacant for which the faculty member is qualified, the president or designee shall make every effort to extend first refusal to the faculty member so terminated.

- 12.1.1 Every effort should be made to reassign an individual to instructional or non-instructional duties commensurate with the faculty member's training and experience, and offers of release time or leaves of absence should be made to enable such persons to acquire capabilities in areas in which their services would be required by the institution. Faculty development programs and funds should be used to facilitate such reassignments.
- 12.2 Institutional policy for accommodating major reduction in or discontinuance of an existing program shall be developed through a collaborative assessment by representatives of administration and faculty and shall be reported to the Board of Trustees prior to implementation. **Institutions should utilize appropriate program change policies, in accordance with Administrative Bulletin No. 30.**
- 12.3 Notice of nonretention ~~due to~~ **because of** program reduction or discontinuance: The president of the institution or designee shall institute proceedings by giving a faculty member written notice of such nonretention by certified mail, return receipt requested.
- ~~12.4 Answer and Service - Within thirty days from the date of receipt of the nonretention notice, the terminated faculty member may file an appeal with the president which shall be heard by the institutional hearing committee, in accordance with Section 14 of these rules.~~
- 12.54 The dates of formal notification for tenured and **tenured-track** probationary faculty shall be those specified in Section 9 of these rules.
- 12.5 An individual faculty member is an employee of only one institution. The several institutions, however, are components of a system of higher education and therefore are mutually dependent upon the health and viability of each other. If faculty members are to be released because of a major reduction in, or elimination of, a program, those persons should be given the courtesy of preferred consideration for vacancies at other institutions in the system. While it is not intended to diminish the principle that an institution selects its own faculty, each institution should be expected to assist the faculty of all other institutions to the extent possible whenever programmatic or budgetary changes or changing demands preclude continuation of competent faculty.
- 12.6 To ensure that preferred consideration may be extended, announcements of vacancies at any institution should be communicated to the chief academic officers or appropriate deans (or other appropriate persons) of the other institutions. All announcements of vacant faculty, administrative, and staff positions should also be sent to the personnel officer at the Board of Trustees' Central Office, who will devise a means to communicate with appropriate parties at the institutions to facilitate the mobility of faculty and staff among institutions.

- 12.7 When interest in a position is expressed by faculty whose programs are to be reduced or eliminated, and when all relevant considerations are deemed essentially equal by the hiring institution, that institution is encouraged to make an offer of employment, first, to those faculty members who have been informed of termination or reduction of their program and, second, to those who seek to relocate within the system. The terms and conditions of offers will be determined by the employing institution.

### SECTION 13. TERMINATION DUE TO FINANCIAL EXIGENCY

- 13.1 Termination of employment due to financial exigency - A faculty member's appointment may be terminated because of a financial exigency, as defined and determined by the Board of Trustees. Institutional plans for meeting a financial exigency shall be developed through a collaborative assessment by representatives of administration and faculty and shall be reviewed by the Board of Trustees prior to implementation. **Institutions should utilize appropriate program change policies, in accordance with Administrative Bulletin No. 30.**
- 13.2 Notice of termination due to financial exigency - The president of the institution **or designee** shall institute proceedings by giving the faculty member written notice of termination by certified mail, return receipt requested, which notice shall contain:
- 13.2.1 A delineation of the rationale used by the Board of Trustees for the determination of a financial exigency;
  - 13.2.2 A copy of the implementation procedures used by the institution related to the financial exigency and a delineation of the rationale used for the termination of the faculty member; and
  - 13.2.3 A description of the appeal process available to the faculty member.
- ~~13.3 Answer and Service - Within ten days of the date of receipt of the termination notice, the faculty member may file a written appeal to the Board of Trustees, in accordance with Section 15 of these rules.~~
- 13.43 To the extent financially feasible, the dates of formal notification for tenured and **tenured-track** probationary faculty shall be those specified in Section 9 of these rules.

### SECTION 14. FACULTY GRIEVANCE PROCEDURE HEARINGS

- 14.1 ~~Grievance procedure options - A faculty member shall have the option of filing grievances: (1) in accordance with the provisions of Section 14, 15, and 16 of this Series; or (2) in accordance with the provisions of article twenty-nine;~~

~~chapter eighteen of the Code of West Virginia. Copies of the Code sections are available in the office of the president at each institution. A faculty member wishing to grieve or appeal any action of the institution or Board of Trustees may utilize the procedures set out in W. Va. Code §18-29.~~

14.2 ~~Hearings under board rule~~ If the faculty member wishes to proceed with a hearing pursuant to the Board of Trustees policies (rather than section one, article twenty-nine, chapter eighteen of the West Virginia Code), Sections 14, 15, or 16 of this rule may apply. A tenure-track faculty member given notice of nonretention and desiring to appeal it under procedures set out in W. Va. Code §18-29 must first request a statement of reasons for such nonretention from the president of the institution or designee within ten (10) working days of receiving the notice of nonretention. The president or designee shall, within ten (10) working days of receiving the request, inform the tenure-track faculty member of the reason for nonretention.

14.2.1 Within ten (10) working days of receiving the statement of reasons, the tenure-track faculty member may appeal the nonretention decision to the Board of Trustees by utilizing a grievance form provided for in W. Va. Code §18-29 and made available by the institution. Such grievance form shall be sent to the Office of Chancellor.

14.2.2 Upon receipt of the grievance form the Chancellor shall appoint the president of the tenure-track faculty member's institution or designee to be the hearing examiner for the tenure-track faculty member's appeal of the notice of nonretention. The president or designee shall conduct the hearing pursuant to the provisions of W. Va. Code §18-29 and render a decision.

14.2.3 If the faculty member is dissatisfied with the decision of the hearing examiner, he/she may appeal that decision to the Education and State Employees Grievance Board within five (5) working days of receipt of the decision.

14.2.4 If the faculty member receives a notice of nonretention, the faculty member may request a review of that decision by an institutional hearing committee comprised of other faculty. The request for such a review must be made within ten (10) working days of receiving the statement of reasons for nonretention set out in Section 14.2 of this rule. Upon completion of the review by the institutional hearing committee, and receipt of its recommendation, the president or designee, shall have ten(10) working days to revoke the notice of nonretention or issue a final statement of reasons for non-retention. If a final statement of nonretention is issued pursuant to this subsection, the faculty member may

then appeal that notice pursuant to the provisions of Section 14.2.1 of this rule.

14.2.4.1 Institutional hearing committees shall be selected and conduct reviews pursuant to procedures adopted by the faculty of the institution and approved by the president or designee. Procedures adopted pursuant to this subsection shall: provide that the review is conducted in an expeditious manner; incorporate strict deadlines; ensure that faculty serving on the institutional hearing committees are available to perform the duties of a committee member twelve months of the year, and be designed to conduct the review in as informal and non-adversarial manner as possible.

14.2.4.2. Any faculty member requesting a review by an institutional hearing committee pursuant to this section must agree to a waiver of the deadlines for notices of retention set out in Section 9.5 of this rule and W.Va. Code § 18-7-4. Such waiver must indicate that any delay in a final notice of nonretention caused by the request for review does not increase the time of employment for the faculty member and that a final notice of nonretention issued pursuant to Section 14.2.4 is sufficient for the purposes of meeting the deadline for notices of nonretention set out in this rule and statute.

~~14.3 Institutional Hearing — In order to assure a fair and impartial hearing, a dismissed (under Section 11 of these rules) or terminated (under Section 12 of these rules) faculty member, or a faculty member desiring to appeal a decision of the president on nonretention (Section 9 of these rules) or promotion (Section 6 of these rules) shall receive a written notice of the hearing process as hereinafter provided and may avail himself or herself of the following hearing procedure:~~

~~14.3.1 — Institutional hearing committee — Each year the faculty of each institution shall elect thirteen tenured or probationary faculty members, representative of the various ranks in the institution who shall be known as the hearing panel. Up to thirty may be elected to serve on the panel in the cases of West Virginia University and Marshall. Terms may be for one or more years. In the event of a vacancy for any cause, the faculty shall fill the vacancy. If the request is for a hearing before the institutional hearing committee:~~

~~14.3.1.1 The president shall, within fifteen days of receipt of the request, furnish the faculty member in writing a list of nine of the faculty members of the Hearing Panel as herein set forth, with instructions to strike four names and return the list to the president within fifteen days. If for any reason the faculty~~

~~member fails to strike, the president shall, within fifteen days, strike a sufficient number to reduce the members to five who shall constitute the institutional hearing committee.~~

~~14.3.1.2 The president shall promptly notify the five members in writing that they have been selected to constitute an institutional hearing committee and that they are responsible for selecting one of their membership to be chairperson, and shall designate a time and place for their meeting to make such selection and to set a date for hearing the charge or appeal.~~

~~14.3.1.3 The chairperson shall give notice by certified mail to the concerned persons of the time and place for hearing the charge or appeal, within thirty days of the date of notice thereof.~~

~~14.4 The hearing shall be conducted as follows:~~

~~14.4.1 The Hearing Committee will hear such proof of facts as may be deemed proper and reasonable and make such investigation and enter such recommendations as the facts justify and the circumstances may require. The faculty member shall have the opportunity to submit evidence relevant to the issues raised in the notice.~~

~~14.4.2 The hearing will be conducted with as little delay as possible.~~

~~14.4.3 The faculty member shall have the right to have an advisor or legal counsel at the faculty member's expense.~~

~~14.4.4 Witnesses will be examined under oath in the manner and form and in the order designated by the committee.~~

~~14.4.5 Formal court rules of evidence shall not apply in such hearings. Technical forms and allegations in pleadings are not required to be observed, and amendments, supplements, or supplemental statements may be made and filed at the discretion of the institutional hearing committee.~~

~~14.4.6 Testimony shall be recorded.~~

~~14.4.7 Audio tape of the testimony, together with copies of the exhibits, shall be furnished to the faculty member, at no charge, upon his or her request. If the tape is transcribed at the request of the faculty member, the cost will be equally shared by the faculty member and the institution.~~

~~14.4.8 As soon as practical after the hearing, the hearing committee shall deliver to the president a summary of the hearing and the findings and recommendations of the committee and shall provide a copy~~

~~of the summary, findings, and recommendations to the faculty member. The president shall, within thirty days after receiving the record and recommendation, issue a decision in writing to the faculty member by certified mail, return receipt requested, and such decision shall be final, unless the faculty member institutes an appeal to the Board of Trustees under the procedures set forth in Section 15.~~

## ~~SECTION 15. APPEAL TO THE BOARD OF TRUSTEES~~

- ~~15.1 An appeal from any final decision of the president of an institution regarding dismissal, nonretention, or denial of tenure which has the effect of nonretention may be taken by the faculty member following exhaustion of the institutional hearing procedures provided above, in accordance with West Virginia Code, section eight, article twenty-six, chapter eighteen. A faculty member who wishes to appeal a final notice of nonretention must first request a statement of reasons of nonretention within ten days of receiving such notice. The president must provide the statement of reasons by certified mail within ten days of receipt of such request. The faculty member must file an appeal in writing with the Board of Trustees within ten ( ) days after receiving the statement of reasons from the president. This appeal shall be designated a Petition of Appeal and shall contain a statement of reasons why the final decision of the president is erroneous or incorrect, together with any appropriate records and any statements of fact or law.~~
- ~~15.2 Such appeal shall be de novo and a record of such appeal shall be made as prescribed herein.~~
- ~~15.3 Time is of the essence in filing the appeal, and in the event the appeal is not filed within the required time period, the decision of the president shall be final.~~
- ~~15.4 The chancellor shall notify the Board of Trustees of the appeal of the faculty member, and within five days after receipt of the petition of appeal of the faculty member, the chancellor shall mail to the faculty member a strike list of the names of hearing examiners who have been selected pursuant to procedures adopted by the Board of Trustees, and all of whom shall be duly qualified and licensed attorneys. The faculty member, within five days of receipt of the list of names, shall strike therefrom half of the names and return the strike list to the chancellor, who shall appoint one of the remaining persons as the hearing examiner.~~
- ~~15.5 The hearing examiner shall determine the date, time, and location at the employing institution for the hearing to be held, and shall give notice thereof, by certified mail, return receipt requested, to the faculty member, the chancellor, and the president of the institution. The hearing must be held within thirty days of receipt of the faculty member's petition of appeal, and the hearing may be continued for reasonable grounds from time to time until completed. It is the sole duty and responsibility of the hearing examiner to determine whether the reasons given for nonretention are arbitrary, capricious, or without factual basis.~~

- ~~15.6 The faculty member shall be accorded substantive and procedural due process, including the right to produce evidence and witnesses and to cross-examine witnesses, and the right to legal counsel or other representation at his or her expense.~~
- ~~15.7 Testimony shall be recorded on audio tapes, which, together with copies of the exhibits, shall be furnished to the faculty member, at no charge, upon his or her request. If the tape is transcribed~~
- ~~at the request of the faculty member, the cost will be equally shared by the faculty member and the institution.~~
- ~~15.8 The hearing examiner shall reduce to writing his or her findings, conclusions, and recommendations and shall set forth whether the reasons regarding dismissal, nonretention, or denial of tenure which has the effect of nonretention were arbitrary or capricious or without a factual basis. A copy of the recommendation of the hearing examiner shall be mailed to all persons to whom the notice of hearing was sent within thirty days after the conclusion of the hearing.~~
- ~~15.9 If a faculty member desires to appeal the recommendation of the hearing examiner, the faculty member must file an appeal with the Board of Trustees within ten days after receipt of the recommendation of the hearing examiner. The appeal filed with the Board of Trustees shall be taken as an appeal on the written record submitted from the hearing held before the hearing examiner. The board, based upon such record, may take such action as it deems reasonable and proper in all circumstances and in answer to all of its responsibilities according to law.~~
- ~~15.10 The Board of Trustees shall submit its decision in writing to the faculty member and the president of the institution within forty-five days of receipt of the report of the hearing examiner. If the faculty member appeals the recommendation of the examiner, this period is extended to seventy-five days.~~
- ~~15.11 In the case of an appeal from a final decision of nonretention by a probationary faculty member, if the reasons for nonretention are judged to be arbitrary or capricious or without factual basis, the faculty member shall be retained for the ensuing contract year. Such an appointment will not prejudice further continuation after that year.~~

## **SECTION 15. ALTERNATIVE FACULTY GRIEVANCE PROCEDURE**

## **SECTION 16. ~~FACULTY GRIEVANCE PROCEDURE FOR MATTERS NOT OTHERWISE ADDRESSED IN THIS RULE~~**

- 15.1** Each University System institution shall provide, through institutional-level procedures, faculty grievance recourse for **those not wishing to utilize the procedures set out in W. Va. Code §18-29.** Said recourse shall be a systematic method whereby individual faculty grievances can be reasonably

presented and reviewed, and action taken related thereto. The institutions procedures shall normally consist of at least three levels or steps of consideration, commencing at the department or division level and concluding with the president or designee. **Mediation of differences is encouraged, and may occur prior to the initiation of this alternative grievance procedure or at any time prior to the level two decision.** Grievance actions capable of being resolved by administrative action shall be resolved at the earliest possible stage.

- 15.1.1      ~~46.1.1~~      Level one - The faculty member will first seek a resolution of the grievance through informal discussion with his or her academic department or division head. **The faculty member must notify his or her department or division head of the grievance within fifteen (15) working days of the occurrence of the event being grieved.**
- 15.1.2      ~~46.1.2~~      Level two - If not satisfied with the resolution at the first level, the faculty member shall reduce the grievance to writing and forward it, within fifteen **(15) working** days, to the next reporting level, normally a division head or dean, with a copy to the level one administrator. Within fifteen **(15) working** days, the level one administrator shall submit a written report concerning the disposition of the grievance at level one to the level two administrator. The level two administrator shall render a decision within fifteen **(15) working** days of receipt of the report from the level one administrator.
- 15.1.3      ~~46.1.3~~      Level three - If not satisfied with the resolution at level two, the faculty member should forward to the president a copy of the grievance, along with the level two administrator's response and supporting documents. In reaching a decision, the president or designee may hold a meeting of concerned parties and/or may refer the issue to an appropriate committee for its recommendation. The president or designee shall notify the grievant of the decision within fifteen **(15) working** days of receipt of the recommendation of the committee, or of the receipt of the level three appeal, whichever is longer. **The decision of the president or designee is final and no appeal may be made to the Board of Trustees.**

~~16.1.4      If there is substantial evidence that the grievance is the result of action taken solely by the president, and that the president therefore cannot remain disinterested or objective in the final resolution of the issue, evidence of injury is provided, and a remedy is feasible, a faculty member may so state in a petition to the chancellor that the issue should be heard by a hearing examiner. A decision will be made by the Appeals Committee of the board as to whether or not a hearing examiner should be appointed in such grievance, and that decision of whether or not~~

~~to appoint an examiner will be final.~~

## **SECTION 16. NOTIFICATION OF TERMS AND CONDITIONS OF FACULTY APPOINTMENTS**

- 16.1** Institutions have a large measure of flexibility in determining the form and style whereby faculty are notified each year of the terms of their appointment. When an initial appointment is made, however, or when the conditions of the appointment change, it is crucial that the faculty member be fully informed of the terms and conditions of employment. While a formal contract may not be necessary each year, the institution may choose one of the several means of notifying faculty about their appointments: a personal letter, a formal contract, or a combination of a letter with a standard contract attached.
- 16.2** It is suggested that the letter of appointment or contract state the following:
- 16.2.1** That the appointment (to the specified position) is offered in accordance with the provisions of the current Board of Trustees' Series No. 36, and (if applicable) of the institution's faculty handbook or other publication.
  - 16.2.2** That the appointment is tenured (a continuing appointment), tenure-track (a year-to-year appointment in a tenure-track for a specified period), or clinical-track, librarian-track, or temporary (an appointment for the period and purposes specified, with no other interest or right obtaining by virtue of the appointment).
  - 16.2.3** That the rank (in case of a tenured, clinical-track, or tenure-track appointment) is Professor, Associate Professor, Assistant Professor, or Instructor, including a clinical-track designation, as appropriate.
  - 16.2.4** That the rank (in case of a librarian-track appointment) is Librarian, Associate Librarian, Assistant Librarian, or Staff Librarian.
  - 16.2.5** That the title (in case of a temporary appointment) is Lecturer, or other specified designation.
  - 16.2.6** That the appointment is full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.
  - 16.2.7** That it is a terminal contract (whenever appropriate).
  - 16.2.8** That it is a joint appointment with another institution (whenever appropriate), with the home institution specified.

- 16.2.9 What the beginning and ending dates of the appointment are.
  - 16.2.10 For tenure-track appointments, the academic year in which tenure must be awarded (the "critical year").
  - 16.2.11 What the total salary for the appointment will be.
  - 16.2.12 That, consistent with the provisions of Board of Trustees' Series No. 36, employment is subject to the fulfillment of the responsibilities of the position during the life of the appointment.
  - 16.2.13 That the specific assignments of the position will be determined by the president or designee (normally, a dean or department head).
  - 16.2.14 That any special conditions which are included in the appointment are made a part of the contract only if they are signed by the faculty member and the president of the institution or designee.
  - 16.2.15 That acceptance of the appointment will be specified by the faculty member's signing, dating, and returning a copy of the letter or contract to the Office of the President or designee within a reasonable time, which should be specified.
- 16.3 Renewal letters, or letters that simply inform the faculty member of a change in salary, need not contain all of the information listed above, but it is appropriate to refer to the earlier letter or contract. Always foremost should be a recognition of the obligation of both parties to communicate with each other, in a timely fashion, about the terms and conditions of employment.