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WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: University System of WV Board of Trustees TITLE NUMBER: 128

CITE AUTHORITY: WV Code Section 18-B-1-6

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

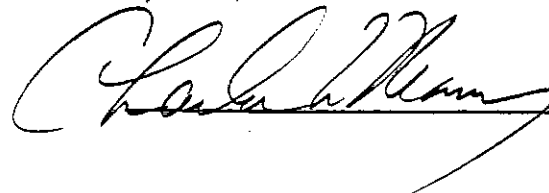
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: Academic Freedom, Professional
Responsibility, Promotion and Tenure, etc.

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS OCT. 10, 1997



\$6.00

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

FILED
SEP 9 4 19 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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. 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 -
- 1.4 Effective Date -
- 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 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. 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 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 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 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, 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 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, tenure-track, 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 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.
 - 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 status, are subject to annual renewal, and may not exceed three years.
 - 3.11.4 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 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.
 - 3.11.5 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.
- 3.12 The president of an institution or designee shall make all tenured, tenure-track, 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.
 - 3.13 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.
 - 3.14 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 .
- 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, 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 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 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 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 the time spent at the institution may, at the discretion of the president or designee, be counted as part of the tenure-track 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 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; 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; 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; 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; 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 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.
- 8.5 Tenure may be attained only by faculty who hold the rank of Assistant Professor or above.

SECTION 9. TENURE-TRACK 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 tenure-track.
- 9.2 During the 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 following receipt of the Board of Trustees' budgetary allocations and guidelines.
- 9.3 The maximum period of tenure-track status shall not exceed seven years. Before completing the sixth year of a 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 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 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 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 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 have those periods of appointment, equal to or greater than half an academic year, considered as full year for tenure purposes only. Tenure-track appointments for less than half an academic year may not be considered time in probationary status. Failure to provide timely notice of nonretention to tenure-track faculty would lead to renewal of appointment for an additional year, but not preclude 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 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.

SECTION 10. FACULTY EVALUATION

- 10.1 All faculty shall receive a yearly written evaluation of performance directly related to responsibilities as defined by the institution.
- 10.2 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 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 the faculty member unable, within a reasonable degree of medical certainty and by reasonably determined medical opinion, to perform assigned duties;
 - 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;
- 11.3 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 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 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 The dates of formal notification for tenured and tenure-track 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 To the extent financially feasible, the dates of formal notification for tenured and

tenured-track faculty shall be those specified in Section 9 of these rules.

SECTION 14. FACULTY GRIEVANCE PROCEDURE

- 14.1 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 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 reasons 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.

SECTION 15. ALTERNATIVE FACULTY GRIEVANCE PROCEDURE

- 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 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 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 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.

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 or Professor/Librarian , Associate Librarian or Associate Professor/Librarian, Assistant Librarian or Assistant Professor/Librarian, or Staff Librarian or Instructor/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.

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

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Cecil H. Underwood
Governor

David R. Ice
Acting Cabinet Secretary

September 8, 1997

The Honorable Ken Hechler
Secretary of State
State Capitol Building 1
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Secretary Hechler,

Please find enclosed the following procedural rule of the University System Board of Trustees which I have approved for final filing:

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

A copy of the rule is attached.

Sincerely,



David R. Ice
Acting Cabinet Secretary

DRI: bec

Attachment

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 9 4 19 PM '97

FILED

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Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

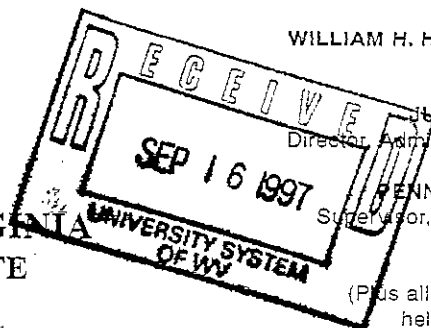
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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)



OFFICE OF THE
SECRETARY OF STATE

DEC 9 2 47 PM '97

FILED

TO: CHARLES MANNING

AGENCY: UNIVERSITY SYSTEM -- TRUSTEES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 15, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 36 TITLE: 128 UNIVERSITY SYSTEM -- TRUSTEES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]
TITLE OF PERSON SIGNING: Executive Assistant to the Chancellor
DATE: 12/8/97

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.



University System of Maryland
College Park, Maryland
20704