

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

UNIVERSITY SYSTEM OF WEST VIRGINIA

AGENCY: BOARD OF TRUSTEES TITLE NUMBER: 128

RULE TYPE: PROCEDURAL; CITE AUTHORITY WV Code 18B-1-6

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: Academic Freedom, Promotion, and Tenure, Etc.

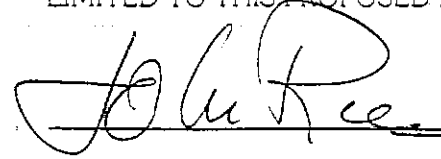
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 26, 1992 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Jo Ann Raines
Public Information Officer/
Governmental Coordinator
1018 Kanawha Blvd., E.
Suite 700
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

5.00

SERIES 36

Series 36, Academic Freedom, Professional Responsibility, Promotion and Tenure provides guidelines for institutions in the University System on matters related to faculty. The proposed policy only revises Section 4.3 which addresses the issue of outside activities of faculty members. The revisions address a decision rendered by the Circuit Court of Monongalia County which upheld an Education Employees Grievance Board hearing examiner's findings which invalidated the long standing policy of prohibiting full-time physician faculty at WVU from earning outside income from the practice of medicine. The proposed modification to Series 36 formalizes what has been the longstanding policy and practice of this and previous governing boards. All other revisions in this proposed rule are cosmetic, e.g. Board of Regents to Board of Trustees, etc.

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

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

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

SECTION 1. GENERAL

- 1.1 Scope -- Policy 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 -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rule - Repeals and Replaces Policy Bulletin No. 36 dated June 20, 1987.

SECTION 2. ACADEMIC FREEDOM

- 2.1 Academic freedom at University of West Virginia System ~~state colleges and universities~~ institutions is necessary to enable the ~~colleges and universities~~ institutions to perform their societal obligations as established by the Legislature. The ~~West Virginia~~ Board of Regents Trustees recognizes that the vigilant protection of constitutional freedoms is nowhere more vital than in the ~~colleges and universities~~ 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 research, extension service, and other professional duties. 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 ~~college or university~~ 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 of West Virginia System ~~state college or university~~ 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.

SECTION 3. APPOINTMENT OF FACULTY

- 3.1 The faculty at any institution under the jurisdiction of the ~~Board of Regents~~ Board of Trustees shall be those appointees of the institution's president as reported to the ~~Board of Regents~~ 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 (1) of the three (3) following classifications:
- (a) 3.2.1 Tenured: Those faculty members who have attained the tenure status by official action of the board or president, and reported to the board.

(b) 3.2.2 Probationary: Those faculty members who have been appointed by the president on a full-time basis and have been designated by the president as being in a tenure track position.

(e) 3.2.3 Temporary -- Those faculty members who have not been appointed in a probationary or tenured status. Their appointment may be full-time or part-time.

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

(a) 3.3.1 Professor;

(b) 3.3.2 Associate Professor;

(e) 3.3.3 Assistant Professor; or

(d) 3.3.4 Instructor

3.4 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 section two, article twenty-two, chapter eighteen.

3.5 Other appropriate titles which more accurately indicate the nature of the position may be used upon the recommendation of the president of an institution, subject to approval by the Board of Regents of Trustees.

3.6 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. Such person will be informed in writing at the time of the appointment whether the faculty rank is as a tenured member, probationary member, 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.

3.7 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.

- (a) 3.7.1 Any of the faculty rank but designated visiting, research, clinical, extension or adjunct, as applicable to describe the connection or function;
 - (b) 3.7.2 Temporary lecturer; or
 - (c) 3.7.3 Assistant, designated as graduate, research, clinical, or adjunct, as applicable to describe the connection or function.
- 3.8 Temporary full-time faculty appointments may be used only if one or more of the following conditions prevail:
- (a) 3.8.1 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;
 - (b) 3.8.2 The appointment is for the temporary replacement of an individual on sabbatical or other leave of absence. Such appointments outside probationary status may not exceed three (3) and are subject to annual renewal.
 - (c) 3.8.3 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 outside probationary status may not exceed three (3) years and are subject to annual renewal.
 - (d) 3.8.4 The appointee is beyond retirement age, according to current Board of Regents Board of Trustees policy;
 - (e) 3.8.5 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 is to be so notified at the time of the appointment. Such appointments outside probationary status may not exceed three (3) years; or

- (f) 3.8.6 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.
- 3.9 The president of an institution shall make all tenured, probationary, and temporary faculty appointments at the institution after consultation with appropriate faculty and other collegiate units, and report those actions to the Board of ~~Regents~~ Trustees.
- 3.10 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 Regents~~ of Trustees, or supplementary actions thereto, as provided by law.
- 3.11 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 temporary, shall be either tenured or probationary.
- 4.2 All temporary appointments, as defined in Section 3 of these rules shall be neither tenured nor probationary, 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:
- (a) 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 or by the president.

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 by the president.

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 by the president are permitted as individual income to the individual faculty member.

(b) 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 to probationary, the time spent at the institution may, at the discretion of the president, be counted as part of the probationary period.

SECTION 5. JOINT APPOINTMENTS

5.1 Faculty members may be appointed to perform academic duties at two (2) or more institutions, which duties may include teaching, research, counseling, or other services. For administrative purposes, one (1) 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 shall establish, in cooperation with the faculty or duly-elected representatives of the faculty, guidelines and criteria for promotion in rank:

(a) 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 ~~colleges~~ institutions might be: Excellence in teaching; accessibility to students, professional and scholarly activities and recognition; significant service to the ~~college-~~ institution community; 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.

(b) 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.

- (e) 6.1.3 There shall be no practice of granting promotion routinely or because of length of service, or of denying promotion capriciously.
 - (d) 6.1.4 The institution shall provide copies of its general guidelines and criteria for promotion to the ~~Board of Regents~~ 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 following consolidation 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; accessibility to students; professional and scholarly activity and recognition; significant service to the college community; 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 people in positions funded by monies under the Board of Regents' 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 following consultation with appropriate academic units.
- 8.4 Tenure may be granted at the time of appointment by the president. In the case of probationary appointees, tenure may be attained only by faculty who hold the rank of Assistant Professor or above.

SECTION 9. PROBATIONARY STATUS

- 9.1 When a full-time faculty member is appointed on other than a temporary or tenured basis in any of the institutions of higher education under the jurisdiction of the ~~Board of Regents~~, Board of Trustees, the appointment shall be probationary.
- 9.2 During the probationary 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 (~~15~~) days following receipt of the Board of Regents' Trustees' budgetary allocations and guidelines.
- 9.3 The maximum period of probation shall not exceed seven (~~7~~) years. Before completing the sixth (~~6th~~) year of a probationary appointment, any nontenured faculty member shall be given written notice of tenure, or offered a one (~~1~~) year written terminal contract of employment. During the probationary period, faculty members may be granted tenured appointment before the sixth (~~6th~~) year of service, such appointment to be based upon criteria established by the institution and copies provided ~~Board of Regents~~ to the Board of Trustees.
- 9.4 During the probationary 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 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, he or she shall notify the probationer 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:

- (a) 9.5.1 Not later than March 1 of the first academic year of service.
- (b) 9.5.2 Not later than December 15 of the second academic year of service; and
- (c) 9.5.3 At least one ~~(1)~~ year before the expiration of an appointment after two ~~(2)~~ 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 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 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, as provided in Section 14 of these rules. The request for a statement of reasons shall be in writing and mailed to the president within ten ~~(10)~~ days of receipt of the notice of nonretention, and the president, within ten ~~(10)~~ 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 ~~section eight c, article twenty-six~~ 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 ~~section eight e article twenty-six~~ 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 ~~section eight e article twenty-six~~, chapter eighteen-B and the faculty member in accordance with Code ~~section eight e, article twenty-six~~, chapter eighteen B, may appeal such decision by requesting a hearing from the Board of ~~Trustees~~ Regents within ten (10) 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 ~~section eight e, article twenty-six~~, 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.
- 10.3 Evaluation procedures shall be developed at the institutional level, and a copy sent to the ~~Board of Regents~~ 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:
- (a) 11.1.1 Demonstrated incompetence or dishonesty in the performance of professional duties;
 - (b) 11.1.2 Personal conduct which substantially impairs the individual's fulfillment of institutional responsibilities;
 - (c) 11.1.3 Insubordination by refusal to abide by legitimate reasonable

directions of administrators or of the ~~Board of Regents~~ Board of Trustees;

- (d) 11.1.4 Physical or mental disability making the faculty member unable, within a reasonable degree of medical certainty and by reasonably determined medical opinion, to perform assigned duties; and
- (e) 11.1.5 Substantial and manifest neglect of duty.

11.2 Notice of dismissal for cause - The president of the institution 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:

- (a) 11.2.1 Full and complete statements of the charge or charges relied upon;
- (b) 11.2.2 A description of the appeal process available to the faculty member;
- (c) 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 Regents Trustees.

11.3 Answer and Service - Within thirty (~~30~~) 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 policy rule or a hearing examiner, as provided in Section 15 of this policy rule. If the faculty member fails to file a timely answer, the notice of dismissal shall be final.

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

12.1 A 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 appropriate policy rule relating to review of academic programs, provided no other program or position requiring equivalent competency exists. If, within (~~2~~) two years following the reduction or discontinuance of a program, a position becomes

vacant for which the faculty member is qualified, the president shall make every effort to extend first refusal to the faculty member so terminated.

- 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 Regents~~ Board of Trustees prior to implementation.
- 12.3 Notice of nonretention due to program reduction or discontinuance: The president of the institution 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 (~~30~~) 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.
- 12.5 The dates of formal notification for tenured and probationary faculty shall be those specified in Section 9 of these rules.

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 Regents~~ 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 ~~Regents~~ Trustees prior to implementation.
- 13.2 Notice of termination due to financial exigency - The president of the institution shall institute proceedings by giving the faculty member written notice of termination by certified mail, return receipt requested, which notice shall contain:
- (a) 13.2.1 A delineation of the rationale used by the ~~Board of Regents~~ of Trustees for the determination of a financial exigency;
- (b) 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

- (d) 13.2.3 A description of the appeal process available to the faculty member.
- 13.3 Answer and Service - Within ten (10) days of the date of receipt of the termination notice, the faculty member may file a written appeal to the Board of ~~Regents~~, Trustees, in accordance with Section 15 of these rules.
- 13.4 To the extent financially feasible, the dates of formal notification for tenured and probationary faculty shall be those specified in Section 9 of these rules.

SECTION 14. 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.
- 14.2 Hearings under board policy - If the faculty member wishes to proceed with a hearing pursuant to the Board of ~~Regents~~ 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.
- 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:
 - (a) 14.3.1 Institutional hearing committee - Each year the faculty of each institution shall elect thirteen (13) 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:

- (1) 14.3.1.1 The president shall, within fifteen (~~15~~) days of receipt of the request, furnish the faculty member in writing a list of nine (~~9~~) of the faculty members of the Hearing Panel as herein set forth, with instructions to strike four (~~4~~) names and return the list to the president within fifteen (~~15~~) days. If for any reason the faculty member fails to strike, the president shall, within fifteen (~~15~~) days, strike a sufficient number to reduce the members to five (~~5~~) who shall constitute the institutional hearing committee.
- (2) 14.3.1.2 The president shall promptly notify the five (~~5~~) members in writing that they have been selected to constitute an institutional hearing committee and that they are responsible for selecting one (~~1~~) 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.
- (3) 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 (~~30~~) days of the date of notice thereof.

14.4 The hearing shall be conducted as follows:

- (1) 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.
- (2) 14.4.2 The hearing will be conducted with as little delay as possible.
- (3) 14.4.3 The faculty member shall have the right to have an advisor or legal counsel at the faculty member's expense.

- (4) 14.4.4 Witnesses will be examined under oath in the manner and form and in the order designated by the committee.
- (5) 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.
- (6) 14.4.6 Testimony shall be recorded.
- (7) 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.
- (8) 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 ~~(30)~~ 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~~Regents~~ under the procedures set forth in Section 15.

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

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 ~~(10)~~ days of receiving such notice. The president must provide the statement of reasons by certified mail within ten ~~(10)~~ days of receipt of such request. The faculty member must file an appeal in writing with the Board of Trustees~~Regents~~ within ten ~~(10)~~ 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~~Regents of the appeal of the faculty member, and within five (~~5~~) 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~~Regents, and all of whom shall be duly qualified and licensed attorneys. The faculty member, within five (~~5~~) 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 (~~30~~) 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 (30) 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~~ Regents within ten (10) days after receipt of the recommendation of the hearing examiner. The appeal filed with the Board of ~~Trustees~~ Regents 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~~ Regents shall submit its decision in writing to the faculty member and the president of the institution within forty-five (45) 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 (75) 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 16. FACULTY GRIEVANCE PROCEDURE FOR MATTERS NOT OTHERWISE ADDRESSED IN THIS RULE

- 16.1 Each college and university ~~University System~~ institution shall provide, through institutional-level procedure, faculty grievance recourse for all appropriate matters not otherwise addressed in this rule. Said recourse shall be a systematic method whereby individual faculty grievances can be reasonably presented and reviewed, and action taken related thereto. The institutional procedures shall normally consist of at least three (3) levels or steps of consideration, commencing at the department or division level and concluding with the president. Grievance actions capable of being resolved by administrative action shall be resolved at

the earliest possible stage.

- (a) 16.1.1 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.
- (b) 16.1.2 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)~~ days, to the next reporting level, normally a division head or dean, with a copy to the level one administrator. Within fifteen ~~(15)~~ 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)~~ days of receipt of the report from the level one administrator.
- (c) 16.1.3 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 may hold a meeting of concerned parties and/or may refer the issue to an appropriate committee for its recommendation. The president shall notify the grievant of the decision within fifteen ~~(15)~~ days of receipt of the recommendation of the committee, or of the receipt of the level three appeal, whichever is longer.
- (d) 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.

APPENDIX A

POLICY BULLETIN NO. 36

Notification of Terms and Conditions of Faculty Appointments

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 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.

Each letter or contract which sets forth the terms and conditions of a faculty appointment should make special note that the appointment is subject to the provisions of ~~Board of Regents'~~ Board of Trustees Policy Bulletin No. 36 and the availability of state funds. In addition, it is suggested that the letter or contract state the following:

1. That the appointment (to the specified position) is offered in accordance with the provisions of the current ~~Board of Regents'~~ Trustees' Policy Bulletin No. 36, and (if appropriate) the institution's faculty handbook or other publication.
2. Whether the appointment is tenured (a continuing appointment), probationary (a year-to-year appointment in a tenure track for a specified period), or temporary (an appointment for the period and purposes specified, with no other interest or right obtaining by virtue of the appointment).
3. Whether the rank (in case of a tenured or probationary appointment) is Professor, Associate Professor, Assistant Professor, or Instructor.
4. Whether the title (in the case of a temporary appointment) is Lecturer, Assistant, or other specified designation.
5. Whether the appointment is full-time or part-time.
6. That it is a terminal contract (whenever appropriate).

7. That it is a joint appointment with another institution (whenever appropriate), with the home institution specified.
8. What the beginning and ending dates of the appointment are.
9. What the total salary for the appointment will be, as well as the number of installments in which the salary will be paid.
10. That, consistent with the provisions of ~~Board of Regents'~~ Board of Trustees' Policy Bulletin No. 36, employment is subject to the fulfillment of the responsibilities of the position during the life of the appointment.
11. That the specific assignments of the position will be determined by the president or a designated representative (normally, a dean or department head).
12. 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.
13. 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 within a reasonable time, which should be specified.

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.

APPENDIX B

REGARDING MAJOR REDUCTION IN PROGRAMS

Guidance for Institutional Policy (Section 12)

PROGRAM REDUCTION OR ELIMINATION

The following provides guidance to institutions as they develop policy concerning consultation on program changes, protection of individual faculty rights when programs are discontinued or substantially reduced in size, and efforts to foster faculty mobility among institutions when desirable. This statement expands on the processes and protections specified in ~~Board of Regents~~ Board of Trustees Series 36, or actions on programs that may stem from Series 11, and Administrative Bulletin No. 23. It is intended to assist institutions to comply with Series 36, Section 12.

All ~~colleges and universities~~, University System institutions especially those which are tax-supported, exist to serve the higher educational needs of one or more identifiable potential student populations in the State. Any given ~~college or university's~~ institution's primary response to these educational needs is expressed through its array of academic degree programs. This program array is designed to meet what, in the best judgement of the institution, are the current and future higher educational needs of these potential student populations. Just as the educational needs of these potential student populations evolve with the passage of time, so too should the program arrays which purport to address these needs. New programs gradually are created to meet emerging educational needs, and these new programs take the place of those for which student markets gradually fade away. It is this latter concern, program reduction or elimination, to which the following statements are addressed.

CONSULTATION AND THE DECISION PROCESS

A proposal for major reduction in or termination of a degree program may follow Administrative Bulletin No. 23 or Policy Bulletin No. 11 processes. Careful adherence to these procedures is of special importance when a proposed program termination affects the prospects for continued employment of probationary or tenured faculty. It is especially important that the affected faculty participate in evaluation of the long-term consequences of a proposal to terminate a program, and the procedures provide for analysis and comment both by the faculty at large, through the appropriate governance body (perhaps a Faculty Senate), and by the programs on actions that are planned, approved, or completed.

It is the president's responsibility to ensure that the affected faculty governance body have an opportunity to review, discuss, and make recommendations concerning termination of, or major reductions in, or consolidation, merger or proposed interinstitutional consortia for a degree program. This advisory role, however, cannot serve to improperly delay action which may itself be a disservice to the affected faculty, students, and staff, and perhaps to the entire academic community. It is recommended that all parties provide any advice to the president of the institution within ninety days following receipt of a proposal prepared in accordance with the provisions of Administrative Policy Bulletin No 23 or resulting from review of a program through Policy Bulletin No. 11. The responsibility to make a recommendation to the ~~Board of Regents~~ Board of Trustees rests solely with the president of the institution. Such a recommendation should include an explicit statement of those protections that will be provided to affected faculty, students, and staff. The president has an obligation to consider such advice in good faith, but cannot escape the duty of accepting responsibility for the recommended action.

PROTECTION OF FACULTY APPOINTMENTS

~~Board of Regents~~ Board of Trustees Policy Bulletin No. 36 provides explicit protections to members of the faculty. Terms and conditions of appointments and rights to due process and appeal are specified in this document.

The following additional practices should be made elements of the principles and practices of all institutions as they develop policy:

1. In the case of major reductions in or termination of programs, each probationary faculty member shall be permitted to complete the period of appointment in accordance with the terms of his or her contract, including the period of notice that is specified in Policy Bulletin No. 36.
2. Each faculty member who has been given notice of termination at the end of the contract period will be allowed early release at the end of any term or session from his or her contract upon request, even though the contract may extend beyond that time.
3. Each faculty member who is given notice of termination at the end of the contract period under these conditions shall be given a personal letter from the institution that expressly states that termination does not imply a negative judgement about the person's individual performance, but is due to a program change.

4. The institution shall assist the faculty member, to the extent possible, in the sending of letters of explanation and professional resumes to other institutions to assist in his or her effort to find suitable placement elsewhere.
5. Tenured faculty shall be given at least one year of notice of termination of employment following Board of ~~Regents'~~ Trustees' action to approve termination of a program or the date of the final institutional action for major reduction in a program.

PREFERRED CONSIDERATION

When possible, institutions should assist displaced faculty members when their services are no longer required, due to elimination or major reductions in the size of a program.

Every effort should be made to reassign an individual to instructional or noninstructional duties commensurate with the faculty member's training and experience, and offers of released time or leaves of absence should be made to enable such persons to acquire the capabilities in areas in which their service would be required by the institution. Faculty development programs and funds should be used to facilitate such reassignments.

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.

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 Regents~~ 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.

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.

FACULTY OBLIGATIONS AND RESPONSIBILITIES

Each member of the faculty has an obligation to foster the viability, adequacy, and necessity for his or her program. The financial stability of a program, recruitment of an adequate concentration of students, and enhancement of the quality of a program is dependent in large part on the faculty themselves. The common burden of quality instruction, program development, and viability must be nurtured and responsibility shared by all.

A faculty member is also responsible for remaining current and valuable to his or her institution. Each is encouraged to explore opportunities for further developing his or her range of skills to become more versatile and acquire skills in demand by the institution. Through individual initiative and faculty development programs, individuals are encouraged to grow in competency in their own disciplines and consider training in related fields. Faculty change, disciplines evolve, and new professions or fields of study emerge.

Faculty also are expected to participate in consultation regarding decision-making concerning programs, and in program review processes as professionals, in good faith, and as members of an academic community, eschewing self-serving behavior that is not in the best interest of the institution or consistent with the best practices of higher education. Integrity, objectivity, and service to the purposes and mission of the institution are expected.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ACADEMIC FREEDOM, PROMOTION AND TENURE, ETC.

Type of Rule: Legislative Interpretive Procedural

UNIVERSITY OF WEST VIRGINIA
 Agency Board of Trustees Address 1018 Kanawha Blvd., E.
Suite 700, Charleston, WV 25301

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	N/A	N/A	N/A	N/A	N/A
Current Expense	N/A	N/A	N/A	N/A	N/A
Repairs and Alterations	N/A	N/A	N/A	N/A	N/A
Equipment	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

FILED
1992 FEB 24 PM 3:45
OFFICE OF THE GOVERNOR
STATE OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

February 24, 1992

GASTON CAPERTON
GOVERNOR

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

Dear Secretary Hechler:

In the absence of a Secretary of Education and the Arts, I hereby grant consent as required pursuant to West Virginia Code §5-2-2 for the promulgation of the following rules by the Board of Trustees of the University System:

- (1) Amending Interpretive Rule Title 128, Series 10
Sabbatical Leave;
- (2) Amending Procedural Rule Title 128, Series 36,
relating to Academic Freedom, Promotion and Tenure,
Etc.; and
- (3) Amending Legislative Rule Title 128, Series 42,
Alcoholic Beverages on the Campuses.

A copy of each rule is attached.

Very truly yours,

Thomas A. Heywood
Thomas A. Heywood
Chief of Staff

GC/lc

cc: Charles Manning
John Thralls
David Mohr
JoAnn Raines