



Legislative Oversight Commission on Education Accountability

WEST VIRGINIA LEGISLATURE

State Capitol Building
Charleston, WV 25305

2013 JAN 11 AM 10:21

SECRETARY OF STATE

Senate Education Committee
Phone (304) 357-7805
Room M-427

House Education Committee
Phone (304) 340-3265
Room M-434

NOTICE OF ACTION TAKEN BY LEGISLATIVE OVERSIGHT
COMMISSION ON EDUCATION ACCOUNTABILITY

January 8, 2013

TO: The Hon. Natalie Tennant, Secretary of State, State Register

TO: Dr. Paul Hill
Chancellor
Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 133-53. Human Resources Administration. (Emergency Rule).**

1. The Legislative Oversight Commission on Education Accountability recommends that the West Virginia Legislature:
 - A. Authorize the agency to promulgate the legislative rule
 - (a) as originally filed -----
 - (b) as modified by the agency -----
 - B. Authorize the agency to promulgate part of the legislative rule; a statement of reasons for such recommendation is attached. -----
2. The Legislative Oversight Commission on Education Accountability recommends that
 - A. the rule be withdrawn; a statement of reasons for such recommendation is attached. -----
 - B. the emergency rule be withdrawn; a statement of reasons for such recommendation is attached. ----X----

Pursuant to Code §29A-3A-12, this notice has been filed in the State Register and with the agency proposing the rule.



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COMMISSION ON EDUCATION ACCOUNTABILITY

January 8, 2013

TO: The Hon. Natalie Tennant, Secretary of State, State Register

TO: Mr. James Skidmore
Chancellor
Council for Community and Technical College Education
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 135-53. Human Resources Administration. (Emergency Rule).**

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**DRAFT EMERGENCY RULES
"FACTs for Higher Education" Act**

SECRETARY OF STATE

Procedural questions:

The rules will need to be amended as new information becomes available from the class and comp studies. These amendments will involve substantive changes. How will the Commission and Council handle this? Will the changes be put out for comment? Will the rules be withdrawn and refiled with changes?

If LOCEA chooses to make changes in the emergency rules before they are implemented, how do you want this to be done?

1. Withdraw the rules, make changes as approved by your boards, and refile for consideration in February?
2. Make changes in the rules and approve for immediate filing with the Secretary of State?

Issues and typos by section:

3.28. The definition of "peer group" appears to be different from the definition provided in Code in **§18B-1-2 (21)**: "...peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;..."

4.1.j. Typo in first line reads "...initial step for his or his pay...." Second "his" should be "her".

7.2. Typo reads "...shall not abridge the rights of an classified employee...." The "an" should be "a".

This section provides that appeals by a classified employee of a classification decision are to be made to the Commission (Council). This seems unnecessary since the appeals ultimately go to the Vice Chancellor of Human Resources. Should not the appeals be sent to the VC first in order to simply and expedite resolution? It also may be assumed that the initial appeal is to be made in writing, but the rules don't say this and they should.

7.3 & 7.4. These sections are very confusing when read in conjunction with section 7.2. 7.2 seems to imply that an appeal goes directly from the employee to the Commission (Council) and in 7.3, it appears that the appeal begins at the institutional level. However, in 7.4, the appeal is back to the state level. The intent here may be clear, but the language needs clarification to show the exact path that an appeal takes. Otherwise, there will be constant

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questions about how the sections fit together.

Also in **7.4.b**, The language should read "The JCC may review comparable positions within the organizations (pl) as defined in section 3.26 of this rule, as appropriate."

8.2. The Compensation Planning and Review Committee is both too large to operate effectively (or even get a quorum) and weighted very heavily toward presidents and employees answerable to them. As currently written, there are 14 members. In addition to the VC for HR and the VC for Finance, two of the members are classified employees, two faculty, two nonclassified employees, four HR administrators, and two presidents. All of these except the two classified employees and the two VCs are answerable directly to the president of the institution and, in fact, the presidents even nominate one of the nonclassified employees! The presidents should not be making appointments. As this committee is currently structured, the classified employees could never carry the day regardless of the correctness of their position!

8.9.f. This language is about as vague as it can be and still be structured as a sentence! What is the concept of a living wage? How is it defined?

9.2 & 9.4. SB 330 directs the Commission and Council to conduct a market salary study for classified employees at least once within each 5-year period. However, the Act also directs the VC for HR to ensure that market comparison studies are conducted for each class of employees and to provide a report annually to each organization on the status of relative market equity among the employee classifications. **9.2** addresses only classified employees and the other comparisons don't appear to be covered elsewhere. **9.4** addresses how compensation of classified employees will be evaluated in relation to appropriate external markets, but makes no provision for addressing faculty and non-classified employees. The rule must provide for all groups to be evaluated in order for the required comparisons to be made to determine relative market equity.

9.8. What is a "relevant recruitment market"? It appears that this language has been slipped in under the cover of the change in definition of "peer group" as pointed out in **3.28** and does not appear to comply with the concept laid out in the Act. Are the peer groups, using either definition, to be considered as

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part of the "relevant recruitment market?" It doesn't appear that they will be.

11.2. The Act became law in March of 2011 and it provides for a systematic step-by-step implementation of its provisions. Part of the agreement among affected parties was that an organization would be considered to have fully funded the classified employee salary schedule if it was funded at the end of October, 2010. However, since the provisions of the Act have not been carried out in the systematic order envisioned by the Legislature, some institutions may have stopped giving step increases after the October 2010 deadline and, therefore, would not be "fully funded" in any except the technical sense. Perhaps this can not be cured in these rules and may need a Code change, but one way or the other, the issue should be addressed.

13.4, 13.5 & 13.7. These sections do not fully clarify the issues relating to non-classified employees who retain the right to return either to faculty or to classified employee positions. 13.7 tries to address this, but isn't as clear as it needs to be. The intent of the language in the Act is to allow the smaller organizations, particularly the CTCs and smallest four-year institutions, to count these non-classified employees in the positions to which they hold retention rights in order to help these organizations meet the maximum ratio requirements. However, for all other purposes, including determination of market equity, these employees are to be counted and reported as non-classified employees, not as faculty nor as classified employees.

It was very disappointing that the Commission and Council chose not to exercise any of the discretion given to them by the Act and failed to include any meaningful accountability measures. The issue of accountability becomes even more critical in light of the presentation made to LOCEA by ModernThink in December. ModernThink spent most of its time focusing on compliance with federal law. Institutions do tend to comply with federal law because the Feds wield the accountability hammer, but they systematically ignore state law and, especially, rules promulgated by the Commission and Council with which they disagree. At a minimum, the emergency rules should contain a definition of "meaningful accountability" that also provides consequences for non-compliance.