

**WEST VIRGINIA
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ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Council for Community & Technical College Education TITLE NUMBER: 135

RULE TYPE: Procedural CITE AUTHORITY: WV Code §18B-1B-6 and §18B-2B-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: Guidelines for Governing Boards in Employing and
Evaluating Presidents

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 10, 2005 AT 5:00 P.M. EST ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

James L. Skidmore, Chancellor
Community and Technical College
Education

1018 Kanawha Blvd. East Suite 700

Charleston, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

Nelson B. Robinson Jr., Chair • James L. Skidmore, Chancellor

SUMMARY

Title 135

Procedural Rule

WV Council for Community and Technical College Education

Series 5

Guidelines for Governing Boards in Employing and Evaluating Presidents

This rule provides general guidelines for the community and technical colleges' board of governors for the presidential search, selection, compensation, contracts and evaluation process. The rule enables consistency among the institutions.

TITLE 433 135
PROCEDURAL RULE
~~HIGHER EDUCATION POLICY COMMISSION~~
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL
COLLEGE EDUCATION

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SERIES 5
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING
~~PRESIDENTS OR OTHER ADMINISTRATIVE HEADS OF INSTITUTIONS~~

SECTION 1. GENERAL

- 1.1 Scope - Rule establishing guidelines for governing boards to use in employing and evaluating Presidents. ~~or other administrative heads of institutions.~~
- 1.2 Authority - West Virginia Code ~~§ 18B-1B-4, § 18B-1B-7~~ §18B-2B-6
§ 18B-1B-6,
- 1.3 Filing Date - ~~December 20, 2002~~
- 1.4 Effective Date - ~~January 10, 2003~~
- 1.5 Repeal of former Rule - Repeals and replaces Series 59 of Title 428 133
~~and 131 and Series 5 of Title 133~~ adopted by the Council.

SECTION 2. STATE COLLEGES AND UNIVERSITIES
COMMUNITY AND TECHNICAL COLLEGES

- 2.1 The provisions of this section shall only apply to the employment of Presidents of ~~Bluefield State College, Concord College, Eastern West Virginia Community & Technical College, Fairmont State College, Glenville State College, Marshall University, Shepherd College, Southern West Virginia Community & Technical College, West Liberty State College, West Virginia Northern Community & Technical College, West Virginia School of Osteopathic Medicine, West Virginia State College, and West Virginia University.~~ They shall also apply to New River Community and Technical College and the Community and Technical College of Shepherd once those institutions gain independent accreditation.
- 2.2 Upon the occurrence of a vacancy in the position of President at one of the institutions set out in section 2.1, the governing board of the institution shall undertake a search for a new President. The governing board is responsible for the search, both procedurally and financially. The governing board shall

adopt a procedure, consistent with this rule, governing the search. The procedure shall require, at the least, that:

- 2.2.1 If a search committee is appointed by the governing board the chair and a vice-chair shall be selected from among those citizen members of the governing board who were appointed by the Governor.
 - 2.2.2 A statement of characteristics and qualities which the new President should possess shall be adopted by the governing board and utilized in soliciting and evaluating the candidates.
 - 2.2.3 If a search committee is appointed, it shall include representation of faculty, students, and staff.
 - 2.2.4 A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and transmitted to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals.
 - 2.2.5 Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, ~~that~~ during the campus visits, students, classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates and their comments solicited by the governing board. Interviews with semi-finalists, at the option of the governing board, may also be conducted on campus.
 - 2.2.6 Background checks may be conducted on each candidate prior to interviewing with the search committee. Background checks shall be conducted on finalists prior to any campus visit made at the invitation of the search committee. On-site visits to the candidates' institutions current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in making background checks and, at a minimum, shall include confirmation of degrees, past employment, and criminal and credit checks.
- 2.3 The governing board, at its discretion, may appoint additional students, faculty, staff, community leaders, alumni, or other citizens to any search committee it appoints.
 - 2.4 Candidates may be considered through their own application or by nomination.

- 2.5 Members of the governing board, or any search committee appointed, shall not provide information about the names or backgrounds of any candidates to anyone not a member of the governing board or search committee until the finalists have been selected and agreed to a campus visit. When candidates are invited to a preliminary interview with the search committee, they shall be notified that confidentiality will be waived in the event that they are invited for a campus interview and their names and backgrounds shall be publicly released at the time they accept an invitation for a campus visit.
- 2.6 At the request of an institution, the ~~Higher Education Policy Commission~~ Council may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search in whatever manner the governing board may choose.
- 2.7 The governing board shall confer with the Chancellor and agree to a method and process for ~~Policy Commission~~ Council members to attend interviews of the finalists, or schedule their own, and approve the final selection of a President by the governing board. The governing board, or any search committee appointed by it, shall promptly transmit to the Chancellor a copy of the procedure adopted to govern the search and agendas and minutes of meetings involving the search.
- 2.8 Terms of compensation and contracts discussed with or offered to candidates shall be consistent with ~~any guidelines or rules~~ the sections of this rule regarding presidential compensation and contracts. ~~adopted by the Policy Commission and any compensation agreed to must be approved by the Policy Commission.~~
- 2.9 Interim Presidents appointed by a governing board ~~until a permanent President is employed~~ must be approved by the ~~Policy Commission~~ Council. An individual, with approval of the ~~Policy Commission~~ Council, may be predesignated as an interim President to fill an unforeseen vacancy in the presidency.

SECTION 3. REGIONAL CAMPUSES OF WEST VIRGINIA UNIVERSITY AT PARKERSBURG AND ADMINISTRATIVELY LINKED COMMUNITY & TECHNICAL COLLEGES

- 3.1 ~~The governing board of West Virginia University shall adopt a procedure, consistent with W. Va. Code § 18B-6-1, governing the appointment of presidents at the regional campuses of West Virginia University and approval of that appointment by the governing board.~~

- ~~3.2 The governing board of an institution with an administratively linked community and technical college shall adopt a procedure, consistent with W. Va. Code § 18B-6-1, governing the appointment of the president of the community and technical college and approval of that appointment by the governing board.~~
- 3.1 The governing boards of Fairmont State Community and Technical College, Marshall Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, West Virginia State Community and Technical College, and West Virginia University at Parkersburg shall adopt a procedure, consistent with W. Va. Code § 18B-6-1 and this section, governing the appointment of Presidents at those institutions and approval of that appointment by the governing board and Council. The provisions of this section shall also apply to New River Community and Technical College and the Community and Technical College of Shepherd until those institutions gain independent accreditation.
- 3.2 The Board of Advisors of the above institutions serve as a search and screening committee for candidates to fill a vacancy in President of that institution. The governing board of the institution shall confer with the Board of Advisors upon a vacancy occurring in the presidency and solicit their recommendations as to the procedure the governing board adopts to guide the Board of Advisors in the search and screening process.
- 3.3 The procedure adopted shall be consistent with the provisions of W. Va. Code § 18B-6-1 and incorporate those provisions of Section 2 of this rule deemed appropriate.
- 3.4 The governing board shall confer with the Chancellor and agree to a method and process for Council members to attend interviews of the finalists, or schedule their own, and approve the final selection of a President by the governing board.
- 3.5 The governing board shall provide all necessary staff assistance to the Board of Advisors in its role as search and screening committee.

SECTION 4. COMPONENT COMMUNITY & TECHNICAL COLLEGES

- ~~4.1 The president, consistent with any procedures adopted by the governing board, shall appoint the provost of a community and technical college that remains a component of that institution.~~
- ~~4.2 The president of an institution with a component community and technical~~

college shall obtain the approval of the Policy Commission before appointing a provost for the community and technical college.

SECTION 5. COUNCIL FOR COMMUNITY & TECHNICAL COLLEGE EDUCATION

- 5.1 ~~The appropriate governing board shall confer with the Vice Chancellor for Community and Technical College Education and Workforce Development and agree to a method or process for members of the Council for Community and Technical College Education to attend interviews of the finalists for president, provost, or administrative head of its community and technical college, or schedule their own, and make recommendations to the Policy Commission, governing board, or president regarding the selection or approval of the president, provost, or administrative head.~~

SECTION 4. PRESIDENTIAL CONTRACTS

- 4.1 Governing boards under the jurisdiction of the Council must receive the approval of the Council of the total compensation package from all sources for a President when the President is initially hired and for any subsequent changes in the total compensation package.
- 4.2 Presidents are considered as will and pleasure employees of their governing board unless that status is specifically altered by the President's letter of appointment or contract. Presidential contracts exceeding a term of one year must conform with the following:
- 4.2.1 An offer of employment as President, or guarantee of employment in that or another position, should not exceed a total of three years if the President has served less than three years, or five years if the President has served at least five years. A President assigned to an alternative position during a guaranteed term of employment must perform substantive duties on behalf of the institution in order to collect his or her salary;
- 4.2.2 All contracts with a term greater than one fiscal year must be conditioned upon availability of funding;

4.2.3 A governing board may agree to reasonable notice of the intent to not renew a contract. It is recommended that such notice not exceed one year but may be increased up to two years after five years of service by the President;

4.2.4 All contracts with a commitment of continued employment must provide that the President may be discharged "for cause" and that such a discharge nullifies any commitment to continued employment. "Cause" includes, but is not limited to, official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, misfeasance, insubordination, and acts of commission or omission in violation of the governing board's directives or policies

4.4 Provisions in existing contracts that are inconsistent with this rule may remain in effect at the discretion of the governing board.

SECTION 5. COMPENSATION

5.1 The total compensation of a President, from all sources, must receive prior approval of the Council. Forms of compensation which must receive prior approval include: annual salary derived from whatever fund source, deferred compensation, and cash housing or vehicle allowances. The governing board may require approval of other compensation such as non-state funded discretionary funds, compensation from other employment or for service on a corporate board of directors, and payment of dues or assessments for membership in non-professional related clubs or associations, and any such compensation received must be reported to the Chancellor. If approval of deferred compensation is being sought the institution must submit an actuarial report to the Council detailing the present cash value of the deferred compensation and on conditions for eligibility or receipt of the deferred compensation.

5.2 The total salary from all fund sources for a President should be based on a comparison of the salaries for all public institutions in the nation of that class and budget size category, as reported by the College and University Personnel Association (CUPA), and should be between the salary listed for the 20th percentile budget category and that listed in the 80th percentile. The governing board of an institution wishing to pay a presidential salary in excess of the 80th percentile must submit a detailed rationale to the Council justifying the action. Other data sources such as the "Chronicle of Higher Education" may be utilized by the governing board, as appropriate, to establish salary ranges.

5.3 A percentage presidential salary increase in excess of the average

percentage salary increase for all personnel at that institution within the last calendar year will only be approved if a detailed rationale of its governing board justifying the increase is submitted to the Council.

5.4 Housing allowances granted a President not provided housing by the institution shall not be considered as part of the Presidential salary for the purposes of Section 5.2 above.

5.5 The Chancellor shall annually make available to the governing boards the most recent CUPA or other comparable data applicable to their institutions.

SECTION 6. PRESIDENTIAL EVALUATION

- 6.1 Each governing board shall conduct a written performance evaluation of the institution's President every fourth year of the President's employment. The President's performance shall be evaluated in relation to the duties and responsibilities assigned the President by the governing board, the success of the institution in meeting each requirement of its institutional compact, and any other criteria previously established by the governing board.
- 6.2 The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel, institutional boards of advisors as appropriate, staff of the governing board and persons who are knowledgeable in higher education matters who are not otherwise employed by a governing board to assist in its evaluation of the President in a way deemed most appropriate by the governing board.
- 6.3 The governing board committee, visiting team, or other body chosen by the governing board, shall visit the campus to receive the views of the President, governing board members, administrators, faculty, classified employees, students, alumni, and community leaders. A schedule of interviews, meetings, and open forums that will assure a careful assessment of leadership and condition of the campus shall be arranged.
- 6.4 The governing board shall use the report of its committee, visiting team, or other body chosen by the governing board to assist in its own written evaluation of the President. The governing board's evaluation shall be reported to the President and Chair of the ~~Policy Commission~~ Council.
- 6.5 The Chancellor shall provide the governing boards, upon request, with evaluative tools, guidelines, and procedures recommended for the assessment and evaluation of college and university Presidents and provide any assistance requested by a governing board in performing the evaluations set out in this rule.

- 6.6 ~~The governing board of the employing institution shall adopt procedures to be used in evaluating the presidents of the regional campuses of West Virginia University and the administratively linked community and technical colleges, except the written evaluation shall be done by the president of the employing institution and not its governing board.~~
- 6.7 6 In addition to the formal evaluation every four years, each President shall receive a written yearly evaluation in a manner and form decided by the governing board. ~~, or by the president of the employing institution for presidents of the regional campuses or administratively linked community and technical colleges.~~

~~SECTION 7.~~ **PRESIDENTIAL COMPENSATION**

- 7.1 ~~Any change in the total compensation package or terms of employment of a president's appointment must be approved by the Policy Commission for those institutions set out in Section 2.1 of this rule and must be consistent with guidelines of the Policy Commission.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Guidelines for Governing Boards in Employing and Evaluating Presidents

Type of Rule: Legislative Interpretive Procedural

Agency: WV Council for Community & Technical College Education

Address: 1018 Kanawha Boulevard East Suite 700

Charleston, WV 25301

Contact: James L. Skidmore, Chancellor
558-0265

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There are no direct costs associated with this rule.

3. Objectives of These Rules:

This rule provides general guidelines for the community and technical colleges' board of governors for the presidential search, selection, compensation, contracts and evaluation process. The rule enables consistency among the institutions.

Rule Title: Guidelines for Governing Boards in Employing and Evaluating Presidents

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: December 7, 2004

Signature of Agency Head or Authorized Representative:

A handwritten signature in black ink, appearing to read "James J. Skidmore", is written over a horizontal line.

**WV Council for Community and Technical College Education
Meeting of February 3, 2005**

ITEM: Approval of Series 5, *Guidelines for Governing Boards in Employing and Evaluating Presidents*

INSTITUTIONS: Community and Technical Colleges

RECOMMENDED RESOLUTION: *Resolved, That the WV Council for Community and Technical College Education approves Series 5, Guidelines for Governing Boards in Employing and Evaluating Presidents, for submission to the Secretary of State's Office for a 30 day comment period and that if no substantive comments are received the Council extends its final approval.*

STAFF MEMBER: Bruce Ray Walker

BACKGROUND:

Senate Bill 448 necessitated changes in Series 5 of the Council's rules to reflect certain changes in governance and the selection of Presidents. The decision was also made to incorporate guidelines the Council had reviewed regarding presidential compensation and contracts. The Presidents and Board Chairs were asked to review a draft of the proposed amended rule and several suggested changes were communicated. The majority of the comments focused on a belief that the existing rule and draft amendments were too detailed and that more latitude should be given the governing boards in the selection, evaluation and compensation of Presidents. This draft addresses some of those concerns by reducing, in some ways, detailed oversight. However, the majority of the rule was retained in a belief that a certain consistency in searches, employment, evaluation, and compensation must be retained among the institutions.