

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2010 APR 22 AM 8:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: WV Code 18B-1B-4 and 18B-10-14

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: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 51

TITLE OF RULE BEING PROPOSED: Bookstores and Textbooks

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 22, 2010


Authorized Signature

FILED

**TITLE 135
PROCEDURAL RULE
COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

2010 APR 22 AM 8:42

SERIES 51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

BOOKSTORES AND TEXTBOOKS

§135-51-1. General.

1.1. Scope - Rule establishing process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.

1.2. Authority - W. Va. Code § 18B-1B-4, 18B-10-14.

1.3. Filing Date - April 22, 2010

1.4. Effective Date - April 22, 2010

§135-51-2. Purpose.

2.1. To require institutions to promulgate rules that fully and adequately address the mandates in W. Va. Code § 18B-10-14 regarding the operation of bookstores and the actions of employees of the institution in the selection and adoption of textbooks and course materials.

2.2. To require institutions to promulgate rules that will effectuate the mandates regarding textbooks and supplementary course materials set out by Congress in the Higher Education Opportunity Act (HEOA) enacted on August 14, 2008, and any successor to that Act.

2.3. To require institutions to promulgate rules addressing the recommendations of the Statewide Task Force on Textbook Affordability contained in the final report of that Task Force jointly adopted by the Higher Education Policy Commission and the Council for Community and Technical College Education (Council).

§135-51-3. West Virginia Code Mandates.

3.1. Each institutional governing board under the jurisdiction of the Council shall promulgate rules that fully and adequately address the statutory mandates of W. Va. Code § 18B-10-14. Specifically, these rules shall, at a minimum:

3.1.1. Provide specific mechanisms to ensure that bookstores operated at institutions under the governing board's jurisdiction minimize the costs to

students for textbooks and course materials. To that end, the governing board rule shall:

3.1.1.1. Commit, to the maximum extent practicable, to the number of used books the bookstore will repurchase from students at the end of each semester.

3.1.1.2. Commit, to the maximum extent practicable, a range of percentage repurchase prices based on the new textbook price.

3.1.1.3. Commit, to the maximum extent practicable, to a selection procedure that will ensure certain basic textbooks will be utilized for a reasonable number of consecutive years without new editions being adopted, or selection of basic textbooks where earlier editions are easily and appropriately utilized in the courses.

3.1.2. Prohibit any employee of the governing board from receiving any payment, loan, subscription, advance, deposit or money, service benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook or supplemental course materials, provided, however, that an employee may receive royalties or other compensation from such sales that include the employee's own writing or work. An employee may also receive free sample copies, instructor's copies and instructional material but may not resell those items and retain the proceeds.

3.1.3. Prohibit any employee of the governing board from requiring for any course a textbook that includes his or her own writing or workbook if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written in or removed from the textbook. This does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook.

3.1.4. Provide firm deadlines for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester.

3.1.4.1. For those deadlines, to the maximum extent practicable, not met there shall be a mechanism in place reasonably calculated to ensure that used textbooks, if available, can be located and purchased by the time of enrollment each semester to the maximum extent practicable.

3.1.4.2. This mechanism should include, but is not limited to, such measures as default selection of certain textbooks, continuing to use the previous textbook, or having a chair or dean select the

textbook. Any such textbook default selection must be strictly enforced and faculty not be allowed to change the selection

3.1.5. Provide that a listing of all selected textbooks and materials selected and assigned prior to each semester shall be prominently posted immediately after such selection process is completed and the textbook and course materials are designated for order by the bookstore.

3.1.5.1. In a central location on campus communicated to the student body;

3.1.5.2. In every campus bookstore operated at the institution;

3.1.5.3. On the institution's website; and

3.1.5.4. With the International Standard Book Number (ISBN), edition number and any other relevant information regarding each textbook or supplemental course materials.

3.1.6. Provide that by November 1 of each year, the institution shall report to the Chancellor of the Council, for the prior fiscal year, the deadlines established for faculty to be assigned to courses; the deadlines for textbooks and course materials to be selected; the percentages of those deadlines met; and the dates the listing of assigned textbooks and course materials were posted pursuant to the requirements of Section 3.1.5 of this rule.

3.1.7. Provide that all revenue the institution receives from a private entity for bookstore operation is utilized for non-athletic scholarships at the institution.

§135-51-4. Federal Mandates.

4.1. Each institutional governing board under the jurisdiction of the Council shall promulgate rules that fully and adequately address the federal mandates regarding textbooks contained in the Higher Education Opportunity Act of 2008 (Public Law 110-315). Specifically, these rules shall, at a minimum:

4.1.1. Provide that textbook publishers soliciting any employee of the governing board to select textbooks or supplemental course material provide that employee, in writing:

4.1.1.1. The price of the textbook and supplemental course materials;

4.1.1.2. The copyright dates of the three previous editions, if any;

4.1.1.3. A description of substantial content revisions from the previous editions;

4.1.1.4. Whether the textbook is available in other lower cost formats and, if so, the price to the institution and the general public;

4.1.1.5. The price of textbooks unbundled from supplemental material; and

4.1.1.6. The same information, to the extent practicable, for custom textbooks.

4.2.1. Provide that no employee of the governing board shall select or assign a textbook or supplemental course materials if the publisher has not supplied the information, in writing, required by Section 4.1.1 of this rule.

4.3.1. Provide that the institution shall provide on its electronic course schedule, or through a link to its bookstore's website, prior to course enrollment each semester for all required or recommended textbooks and supplemental material:

4.3.1.1. The ISBN number and retail price, or if the ISBN number is not available then the author, title, publisher and copyright date.

4.3.1.2. If such disclosure is not practicable, then the designation "To Be Determined."

4.3.1.3. A reference shall be made on any written course schedule to the information available on the electronic course schedule accessible through the institutional website and the internet address for the electronic course schedule.

4.4.1. Provide that the institution will include on its website or through a link to its bookstore's website and electronic course schedule any of its policies or provisions for:

4.4.1.1. Rental of textbooks;

4.4.1.2. The purchase of used textbooks;

4.4.1.3. Textbook repurchase or buy backs; and

4.4.1.4. Alternative content delivery programs.

4.5.1. Provide that the institution will update its policies to comply with any future federal mandates.

§135-51-5. Textbook Affordability Committee.

5.1. Each institution shall establish a permanent Textbook Affordability Committee consisting of faculty, students, administrators and bookstore representatives which shall meet periodically, but at least annually, to advise the faculty senate, student government, administration, and institutional board of governors on affordability issues and initiatives, textbook selection guidelines and strategies, and educational opportunities.

5.2. The governing board shall annually meet with the Textbook Affordability Committee to receive any recommendations or reports it may have generated and copies of any such recommendations and reports shall be transmitted to the Chancellor of the Council.

§135-51-6. Required Provisions.

6.1. In adopting the policies required by this rule each governing board shall:

6.1.1. Adopt guidelines for faculty in the selection of textbooks and supplementary course materials that ensure appropriate, high quality course materials are selected but give students timely access to the most affordable materials. Institutions are encouraged to consider:

6.1.1.1. Requiring faculty to consider more than one textbook publisher and compare prices for textbooks and course materials;

6.1.1.2. Requiring that all new textbook selections submitted to the appropriate dean or chair for approval be accompanied by a simple form for the faculty member to state whether or not the written information required from the publisher pursuant to Section 4.1.1 of this rule, if requested, was provided;

6.1.1.3. Discouraging selection of textbooks in which less than 50 percent of the content will be used in the course unless the same textbook will be utilized by the student in other courses;

6.1.1.4. Encouraging selection of textbooks that have low cost alternative editions available;

6.1.1.5. Encouraging selection of textbooks it is believed will not be revised by the publisher in the near future;

6.1.1.6. Utilizing consortiums which make available open source textbooks or course materials to faculty and students free or at low cost;

6.1.1.7. Directing an examination of the feasibility of operating a textbook rental program;

6.1.1.8. Providing that the institution shall conduct training for all faculty, at the time of hire and periodically thereafter, on textbook selection and strategies that guarantee high quality course materials at the most affordable cost;

6.1.1.9. Providing that at least one administrator at the institution shall be designated as a liaison with textbook publishers, to be responsible for dissemination of relevant information to the faculty on textbook strategies and education and training opportunities regarding textbook selection, and to enforce the policies the governing board adopts;

6.1.1.10. Providing that the institution, to the maximum extent practicable, consider placing a copy of required textbooks on reserve in the institutional or departmental library;

6.1.1.11. Addressing the issue of providing financial aid to students prior to the start of classes that will allow them to purchase course materials; and

6.1.1.12. Addressing the institution's commitment to utilizing various 21st Century technology innovations for the provision of textbooks and course materials, such as electronic textbooks, on-line textbooks, print-on-demand services, open source materials, and institution produced textbooks.

6.1.1.13. Periodically updating their rules to address emerging technologies or new strategies which address textbook affordability.

§135-51-7. Deadline.

7.1. The rules required by this rule shall be adopted by each governing board within 180 days of the effective date of this rule.

**West Virginia Council for Community and Technical College Education
Meeting of April 15, 2010**

ITEM: Approval of Series 51, *Bookstores and Textbooks*

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, that the West Virginia Council for Community and Technical College Education approves Series 51, *Bookstores and Textbooks*, for final filing with the Secretary of State.

STAFF MEMBER: Bruce Ray Walker

BACKGROUND:

At its December 7, 2007 meeting, the Council directed its Chancellor to consult with the Chancellor of the Higher Education Policy Commission regarding the appointment of a Statewide Task Force on Textbook Affordability to make recommendations for statewide initiatives to address textbook costs. The subsequent Task Force was jointly chaired by Ms. Kay Goodwin and Mr. Nelson Robinson. Several meetings were subsequently held by the Task Force and with others in public forums across the state. At its August 19, 2009 meeting, the Council received the Final Report of the Task Force complete with recommendations. Among those recommendations was that a rule be adopted by the Council guiding the institutions in the development of the statutorily required rules each institution must have in place regarding bookstores and textbooks.

The attached draft rule requires that the governing boards, in adoption of their own rule, take the following actions:

- Require institutions to address the mandates in W. Va. Code § 18B-10-14 regarding the operation of bookstores and the actions of employees in adoption of textbooks and course materials.
- Require institutions to promulgate rules that will effectuate the mandates in the federal Higher Education Opportunity Act.
- Require institutions to address the recommendations of the Task Force.
- Require deadlines for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester, with some mechanism put in place for a default selection of textbooks if deadlines are not met.
- Require annual reports to the Chancellor on deadlines set and percentage of those deadlines met.

- Require a Textbook Affordability Committee at each institution to advise the governing board.
- Consider a number of nationally recognized strategies that have been identified as reducing increased textbook and course material costs.
- Place a deadline on a governing board to adopt new rules addressing the requirements of this rule.

At its January 21, 2010 meeting, the Council approved placing the draft rule out for a thirty-day comment period. Several comments were received and changes made in the draft rule to reflect some of those comments. Those comments and explanations for change are attached to this agenda item.

It is recommended that the West Virginia Council for Community and Technical College Education approve Series 51, Bookstores and Textbooks, for final filing with the Secretary of State.

CHANGES MADE BASED UPON COMMENTS

- Section 3.1.1.3 was changed to provide that earlier editions could be utilized if appropriate.
- Section 3.1.4 was changed to require firm deadlines "to the maximum extent practicable" for faculty to be assigned to courses and textbooks to be selected. The change was made to reflect that faculty turnover might make some deadlines impracticable.
- Section 3.1.4.2 was changed to address a comment that the language of the first draft might mislead persons to believe the listed examples were the only options.
- Section 4.3.1 was deleted because of comments that there may be no practical way to penalize publishers.
- Section 6.1.1.2 was changed to address concerns that this requirement might impose too great a burden on faculty. The change provides for a simple form where the faculty member indicates whether requested material was provided.
- Section 6.1.1.13 was added to address concerns that the strategies set out in 6.1.1 for institutions to consider might become outdated.

Other comments submitted and considered, but for which no changes were made, included:

- Faculty do not need a rule to tell them how to select textbooks.
- The concept of a Textbook Affordability Committee at each institution was supported.
- The rule might infringe on academic freedom and is a burden to faculty.
- The collection of the information in 3.1.6 is too burdensome.
- Section 4.1.1 should be deleted until federal rules are adopted.
- Textbook default selections are not feasible or advisable.



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

Robert L. Brown, Chair • James L. Skidmore, Chancellor

SUMMARY

Title 135

Procedural Rule

WV Council for Community and Technical College Education

Series 51

Bookstores and Textbooks

This rule establishes process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials. It requires institutions to promulgate rules that fully and adequately address the mandates in WV Code §18B-10-14 regarding the operation of bookstores and the actions of employees of the institution in the selection and adoption of textbooks and course materials. The rule also requires institutions to promulgate rules that will effectuate the mandates regarding textbooks and supplementary course materials set out by Congress in the Higher Education Opportunity Act and to promulgate rules addressing the recommendations of the Statewide Task Force on Textbook Affordability contained in the final report of that Task Force jointly adopted by the Higher Education Policy Commission and the Council for Community and Technical College Education.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bookstores and Textbooks

Type of Rule: Legislative Interpretive Procedural

Agency: WV Council for Community and Technical College Education

Address: 1018 Kanawha Blvd., East, Suite 700
Charleston, WV 25301
James L. Skidmore, Chancellor

Phone Number: 304-558-0265 Email: Skidmore@wvctcs.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no direct costs associated with this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Bookstores and Textbooks

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There are no direct costs associated with this rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Objective of this rule: This rule establishes process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.

Date: 1/29/10

Signature of Agency Head, or Authorized Representative

