

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Candace Kraus

BACKGROUND:

At its meeting of June 22, 2018, the Commission approved revisions to Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents. House Bill 2815 enacted in 2017 removed authority of the Commission in approving the appointment and compensation of presidents at the exempted schools. In addition, the legislation removed the requirement that the Commission approve the appointment of a president at a non-exempt school and instead gives it the power only to confirm an appointment. Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents, is being modified to conform to these statutory changes.

During the thirty-day public comment period, the following comments were received:

Comment: The general nature of my comments regarding this proposed rule relate to WV open-meeting law of WV Code §6-9A and the WV Freedom-of-information-Act of WV Code §29B. These articles of code are fundamental to democratic governance and public sovereignty in West Virginia and must not be minimized, marginalized or preempted by this or any agency's rules. WV Code §18B describes requirements specific to Higher Education that work with but do not supersede the other two articles. It's (sic) word must not be interpreted to exclude higher ed institutions from following WV Code §6-9A or §29B.

Response: *Each comment provided has been analyzed and considered for amendment.*

Comment: The following are my suggested amendments to the proposed TITLE 133 Legislative Rule that will emphasize and better guide the BOG's to understand and comply with what is already required in state code, but has so often been neglected or misunderstood. Please consider these suggestions and implement them as seems best to you to best accommodate their intent. Further comments are interspersed throughout the proposed rule as needed and relevant to my suggested changes.

Response: Each comment provided has been analyzed and considered for amendment.

Comment: Recommends modifying §133-5-1 through §133-5-2.2.c to read as follows:

TITLE 133 LEGISLATIVE RULE

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 5 GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING PRESIDENTS

§133-5-1. General.

1.1. Scope - Rule establishing guidelines for governing boards of non-exempted schools to use in employing and evaluating presidents.

1.2. Authority - West Virginia Code "18B-1B-4, 18B-1B-6.

1.3. Filing Date – April 14, 2009

1.4. Effective Date – May 14, 2009

1.5. Repeal of former Rule – Repeals and replaces former rule dated May 14, 2009.

1.6. Other Applicable WV Code.

§29B; §6-9A

§133-5-2. State Colleges and Universities.

2.1. The provisions of this rule apply to the employment of presidents of Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College, and West Virginia State University.

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 and WV code, governing the search. The search procedure adopted by the governing board shall be approved by the West Virginia Higher Education Policy Commission ("Commission") prior to being implemented. The procedure shall require, at the least:

2.2.a. Input as to the best characteristics and qualities of the President should be solicited by the governing board of its constituencies and utilized in selecting and evaluating the candidates.

2.2.b. If a search committee is appointed, it shall include representation of faculty, students, and staff, and other constituencies of the institution. The number and constituency of the membership of the committee shall be at the discretion of the governing board.

2.2.c. A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and the means and time-frame for submitting applications, and distributed to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals for the purpose of advertising the position.

2.2.d. Instructions that all steps leading to the consideration of individual candidate applications, including but not limited to:

(1) determination of the need for the presidential search;

(2) solicitations for input from the constituents;

(3) the decision to search as a board or to appoint a search committee;

- (4) determination of the make-up of the search committee;
- (5) determination of the qualifications and characteristics of the new president;
- (6) determination of means, details and time-frame for advertising and conducting the search;
- (7) approval to file the qualifications, time-line and position advertisement with the HEPC are “general personnel policy issues” and decisions according §6-9A-4.(b).(2).(B) that must be made in open-meeting.

Response: The comments include provisions that are overly burdensome, overly prescriptive, redundant, and/or beyond the scope of the proposed rule. Additionally, the proposed rule provides for representation in the process by the constituent groups.

Comment: The WV Ethics Commission has, over the years, repeatedly ruled that the steps of employee searches that do not deal with the specific personal private information of a specific individuals meaning not dealing with specific applications or preliminary interviews, constitute general personal issue policies that must be handled in public according to §6-9A-4.(b).(2).(B). Specifying these steps and their nature as general personnel decisions will guide our BOG’s toward greater transparency and honesty in these searches.

Response: The comments are beyond the scope of the proposed rule.

Comment: The list of qualifications, the time-line, the job description and advertisement, etc. are public documents that the public has a right to observe being determined for readiness and merit and approved.

Response: The comments are beyond the scope of the proposed rule.

Comment: All determinations of general personnel policies in a presidential search are “decisions” under §6-9A-1(1) and §29A-1-4 and are required to be made in open meeting under §6-9A-3. For example, The BOG’s should be guided to share all their general personnel issues information with the public and constituents and make all general personnel determinations and other decision in open-meeting so the law and its purpose stated in §6-9A-1 can be better fulfilled.

Response: The comments are beyond the scope of the proposed rule.

Comment: Solicitation of input from constituents should be required rather than recommended. The BOG’s should not have an option of choosing to do it on their own without our input. That’s what the FSU BOG chose to do for their first attempt at the last presidential search back in 2016. They kept the need for a new president, their choice to conduct the search themselves, and the steps of the general personnel policy determinations secret, made in executive session and behind the scenes in private conversations and communications by individual board members. Let us not allow that to happen again, at any institution.

Response: The comments are beyond the scope of the proposed rule. Additionally, the proposed rule provides for participation in the process by representatives of the constituent groups.

Comment: Recommends modifying §133-5-2.2.d through §133-5-2.8 to read as follows:
2.2.d e. Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates, and their comments shall be solicited and evaluated by the governing board.

2.2.e f. Background checks may be conducted on each candidate prior to interviewing with the search committee or governing board. Background checks should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall be conducted prior to any final selection by the search committee or the governing board. On-site visits to the candidates' current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in conducting background checks and, at a minimum, shall include confirmation of degrees and past employment and criminal and credit checks.

2.3. Candidates may be considered through their own application or by nomination.

2.4. Members of the governing board, or any search committee appointed, may not provide information about the names or backgrounds of any candidates, without their consent, to anyone who is not a member of the governing board or search committee, or authorized agents or staff as designated in the search procedures approved by the Commission. When candidates are invited to a preliminary interview with the search committee, they shall be notified of the conditions under which confidentiality may be waived as to background checks and that in the event that they are invited for a campus interview, their names and backgrounds shall be publicly released at the time they accept an invitation for a formal campus visit.

2.5. At the request of an institution, the Commission 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.

2.6. The Chancellor shall serve as an ex officio, non-voting member on all search committees or bodies serving in that capacity during the search process. The Commission reserves the right to conduct independent interviews of one or more finalists. Prior to exercising such option, it shall give sufficient notice to the governing board so that any such interviews will occur sufficiently close to the final decision of the governing board. All presidential appointments must be confirmed by the Commission.

2.7. Terms of compensation and contracts discussed with or offered to candidates shall be consistent with the sections of this rule regarding presidential compensation and contracts.

2.8. The search for an Interim President must also follow WV Code regarding openness and public records. All aspects of the search that do not involve the specific private information of Individuals being considered, including qualifications, time-line, job

description, hiring of a search firm and advertising, must be handled in open meeting. Interim Presidents appointed by a governing board shall be confirmed by the Commission. BOG's continue to abuse the lack of explicit requirement statements regarding the hiring of interim presidents. This process needs to become as open as the full presidential search.

Response: The comments are beyond the scope of the proposed rule.

Comment: Recommends inserting a new §133-5-2.9 to read as follows:

2.9 The Commission has authority under §18B-1B-4(c)(1) to object to a governing board's search procedures or actions when they are found to be in violation of WV code such as §29B; §6-9A, and may temporarily suspend a governing board's rule-making or other authority in order to bring the governing board into compliance with WV state law and reestablish sound, responsible institutional governance. This rule should remind BOG's of the authority and power the HEPC has to ensure that they follow the law. Certain institutions may be exempt from certain steps or requirements of the HEPC in their presidential searches, but they cannot be exempt for the fundamental laws of openness, rule-making and public service. The HEPC remains authorized to hold all BOG's accountable for their actions in following or violating the laws of West Virginia.

Response: The comments are beyond the scope of the proposed rule.

These comments were not relevant to the content of the rule and therefore no additional revisions to Series 5 were made.