



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-04
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: Yes
RULE NAME: Rules and Administrative Procedures
CITE STATUTORY AUTHORITY: 18B-1-6

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 28, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 4
RULES AND ADMINISTRATIVE PROCEDURES

§133-4-1. General.

1.1. Scope. Rule establishing process for adoption, amendment, or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education under the jurisdiction of the West Virginia Higher Education Policy Commission (Commission).

1.2. Authority. West Virginia Code §18B-1-6(c)(3).

1.3. Filing Date. August 28, 2018.

1.4. Effective Date. September 28, 2018.

1.5. Repeals and replaces previous Series 4 dated April 19, 2013.

§133-4-2. Definitions.

2.1. Rule. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institution-wide effect or affects the rights, privileges or interests of employees, students or citizens. The following are not rules:

2.1.a. Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution that deal solely with the internal management or responsibilities of a single unit, division, department or school; or

2.1.b. Academic curricular policies that do not constitute a mission change for the institution.

2.2. Administrative Procedure. Any regulation, guideline, directive, standard or statement of policy or interpretation of future effect that does not qualify as a “rule.”

§133-4-3. Application.

3.1. This rule shall apply to the adoption, amendment, or repeal of any rule by a governing board of any public higher education institution under the Commission’s jurisdiction, as well as to the posting and publication of rules and administrative procedures.

3.2. A governing board may not delegate responsibility for approving a rule to the President.

3.3. The Chancellor shall periodically advise institutions of topics that should be dealt with only through the rule-making process. If the governing board or President of an institution is unsure whether the rulemaking process must be used, the governing board or President shall seek guidance from the Chancellor or his/her designee.

3.4. Each institution’s governing board shall adopt a rule that outlines the rulemaking process at that institution pursuant to this rule and West Virginia Code.

3.5. No rule shall be adopted, amended, or repealed by a governing board without the appropriate provisions in this rule and its own rule on rules being met.

§133-4.4. Rulemaking Process.

4.1. Consultation. Institution officers are encouraged to consult with interested groups before presenting a proposed rule to the governing board for consideration.

4.2. Approval of Proposed Notice and Rulemaking. If a governing board determines that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the governing board shall approve a notice of proposed rulemaking. A notice of proposed rulemaking shall include:

4.2.a. A brief description of the subject matter of the rule, an explanation of how comments will be received, the deadline for receiving comments, and contact information for the person who has been designated to receive comments; and

4.2.b. A copy of the proposed rule if adoption or amendment is proposed or a copy of the current rule if repeal is proposed.

4.3. Notice of Proposed Rulemaking. Notices of proposed rulemaking shall be provided directly to the Chancellor, those persons representing students, faculty, and staff at the institution, and other interested parties. In addition, notices of proposed rulemaking shall be posted prominently at a location or locations accessible to the public and identified in the institution's rule on rules, as well as posted on the institution's website, and copies be made available at no cost to any requester.

4.4. Comment Period. Except for emergency rules, a notice of proposed rulemaking must provide for a public comment period of at least thirty (30) days during which written comments will be received before final adoption of the rule. A President or governing board may also provide for a public hearing.

4.5. Approval of Final Rule.

4.5.a. If a governing board originally approved a notice of rulemaking at a previous meeting and no comments are received during the comment period, a proposed rule need not be re-approved by the governing board if the board provides so at the time it approves the proposed rule.

4.5.b. If written comments are received or a hearing held during the comment period, the governing board shall summarize the comments received and/or made and make a determination concerning each issue raised. The governing board may amend a proposed rule as a result of the comments or evidence received. All written comments and evidence received and determinations made by the governing board shall be made available in the manner set out in Section 4.3 of this rule at least ten (10) days prior to the meeting in which the governing board gives final approval to the rule and be carefully preserved by the institution and open for public inspection and copying for a period of at least five (5) years from the date of final board action.

4.5.c. The institution shall furnish the Chancellor or his/her designee with a copy of the final proposed rule fifteen (15) days prior to the governing board's formal adoption of the final rule.

4.5.d. Except as set forth in Section 4.5.f of this rule, any rule adopted by a governing board shall not be effective until reviewed and commented on by the Chancellor or his/her designee. The Chancellor or his/her designee shall notify the governing board of any specific or general objections to the rule within fifteen (15) days of receiving the proposed rule and allow the governing board to address the objections.

4.5.e. In situations where the governing boards have been given authority that inherently requires the governing board to promulgate and adopt a rule, that authority is void until the governing board adopts a rule in a manner consistent with this rule and West Virginia Code.

4.5.f. Any rule adopted by the governing boards of the exempted schools under West Virginia Code §18B-1-2 shall not be subject to Section 4.5.d. of this rule. However, the exempted schools shall submit their proposed rule to the Chancellor and the Chancellor shall submit any comments or suggestions to the governing board within fifteen (15) days. Any comments or suggestions made by the Chancellor regarding a proposed rule by any governing boards of non-exempted schools may not become effective or implemented until the governing board places the comments or suggestions on its agenda and considers them at a meeting of the governing board.

§133-4-5. Posting and Publication of Approved Rules.

5.1. Approved rules shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

5.2. Approved rules shall be enumerated in a manner that makes them easily identifiable.

5.3. No later than October 1 of each year, each institutional governing board shall file with the Commission a list of all institutional rules that were in effect on the first day of July of that year, as well as a list of institutional rules repealed during the preceding year.

5.3.a. For each rule listed, the governing board shall identify the most recent date on which each rule was adopted, amended or repealed.

5.3.b. The list shall include a statement by the chair of the governing board certifying that the governing board complied with the provisions of West Virginia Code §18B-1-6 and this rule when each rule was adopted.

§133-4-6. Emergency Rules.

6.1. In the case of an emergency, a governing board of a non-exempted school may adopt, amend, or repeal a rule without first following the procedure set out in this rule. An exempted school's governing board shall include any such authority in its own rule on rules.

6.2. For the purpose of this section, an emergency exists when the adoption, amendment, or repeal of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare, or is necessary to comply with a time limitation established by state or federal law or regulation or a directive or rule of the Commission, or to prevent substantial harm to the public interest, or to deal with financial exigency. The facts constituting an emergency shall be communicated in writing in advance to the Chancellor, who shall disapprove the action of the governing board if the Chancellor, or his/her designee, disagrees that an emergency existed.

6.3. Any emergency rule shall remain in effect no longer than three (3) months and shall expire unless a final rule has been approved under the normal process set out in this rule.

§133-4-7. Administrative Procedures.

7.1. This rule contains no restrictions on the adoption, amendment or repeal of administrative procedures. A governing board, however, is free to impose restrictions on this process.

7.2. The institution shall post administrative procedures prominently at places where those subject to the administrative procedures are likely to see them.

§133-4-8. Enforceability.

8.1. Any institution rule that fits within the definition contained in Section 2.1 of this rule, but which has not previously been adopted by a formal vote of the governing board, must be adopted, amended or repealed by the governing board on or before July 1, 2006, or it shall be void and may not be enforced.

8.2. Any institution rule adopted, amended or repealed after the effective date of this rule in a manner inconsistent with the provisions of this rule shall be void and may not be enforced.

8.3. Any institution rule or policy statement not posted in a manner consistent with the provisions of this rule may not be enforced.