



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-05  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes  
RULE NAME: 133-05 Guidelines for Governing Boards in Employing and Evaluating Presidents

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2018

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Institutional constituents informed of public comment period.

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

Establishes guidelines for governing boards for non-exempt public higher education institutions to use in employing and evaluating presidents.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

Consistent with statutory requirement, 18B-1-6, to promulgate rule for governing boards to employ a president and clarifies the powers, duties and roles of governing boards, commission, and chancellor.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

N/A

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**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.

133CSR5

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. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§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, ~~Marshall University~~, Shepherd University, West Liberty ~~State College~~ University, ~~West Virginia School of Osteopathic Medicine~~, and West Virginia State University ~~and West Virginia 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, 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:

2.2.1a. 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.

2.2.2b. 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.

2.2.3c. A position announcement shall be prepared detailing the characteristics and qualities sought in a new President 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.

2.2.4d. 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.

2.2.5e. 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 ~~shall~~ must be ~~approved~~ 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. Interim Presidents appointed by a governing board shall be ~~approved~~ confirmed by the Commission.

### **§133-5-3. Presidential Contracts.**

3.1. Governing boards under the jurisdiction of the Commission shall receive the approval of the Commission 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.

3.2. A President is considered as will and pleasure employee of his/her governing board unless that status is specifically altered by the President's letter of appointment or contract. Presidential contracts exceeding a term of one fiscal year shall conform to the following:

3.2.4a. An initial offer of employment as President, or guarantee of employment in that or another position, may not exceed two years. After the initial contract, the governing board may offer contracts of up to five years. A President assigned to an alternative position during a guaranteed term of employment shall perform substantive duties on behalf of the institution in order to collect his or her salary.

3.2.2b. All contracts with a term greater than one fiscal year shall be conditioned upon availability of funding.

3.2.3c. A governing board may agree to reasonable notice of the intent not to 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.

3.2.4d. 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.

3.3.5.e. Provisions in contracts existing on the effective date of this rule that are inconsistent with this rule may remain in effect at the discretion of the governing board unless the provisions are in violation of the statute.

#### **§133-5-4. Compensation.**

4.1. The total compensation of a President, from all sources, shall receive prior approval of the Commission. Forms of compensation which require prior approval include: annual salary derived from whatever funding source, deferred compensation, and 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. Any such compensation received shall be reported to the Chancellor. If approval of deferred compensation is being sought, the institution shall submit an actuarial report to the Commission detailing the present cash value of the deferred compensation and conditions for eligibility or receipt of the deferred compensation.

4.2. The total salary from all funding sources for a President should be based on a comparison of the presidential salaries at the institution's peer institutions, ~~as defined by the Commission. Other or other~~ national data sources which may be utilized by the governing board, as appropriate, to establish salary

ranges.

4.3. A percentage presidential salary increase in excess of the average percentage salary increase for all personnel at that institution within the last calendar year may be approved only if a detailed rationale of its governing board justifying the increase is submitted to the Commission.

4.4. Housing allowances granted a President not provided housing by the institution may not be considered as part of the presidential salary for the purposes of Section 4.2 above.

4.5. Annually, the Chancellor shall make available to the governing boards and Commission the most recent College and University Professional Association for Human Resources (CUPA-HR) or other comparable salary data applicable to their institutions.

4.6. The Commission must receive notice, but need not approve or confirm an increase in the compensation of a President that is exactly in the ratio of compensation increases allocated to all institutional employees if approved by the governing board.

**§133-5-5. Presidential Evaluation.**

5.1. Each governing board shall conduct a formal and structured written performance evaluation of the institution's President every third 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.

5.2. The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel-including faculty and staff as well as students, and persons who are knowledgeable of higher education matters ~~who are not otherwise directly employed by a governing board~~ to assist in its evaluation of the President.

5.3. 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, non-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.

5.4. 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 of the institution, the Chancellor, and the Chair of the Commission.

5.5. 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.

5.6. The governing board shall conduct a written evaluation at the end of the initial contract period. In addition to the formal and structured evaluation every three years and at the end of the initial contract period, each President shall receive a written yearly evaluation in a manner and form decided by the governing board.

5.7. The Commission shall not approve any request for an increase in compensation of a President prior to receiving an evaluation of that President for the year immediately preceding the requested increase.