



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: 133-53
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes
RULE NAME: 133-53 Human Resources Administration

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18B-1-1

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: 12/21/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 1/21/2019

COMMENTS RECEIVED: No

(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?

N/A

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

N/A

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

N/A

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		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	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
2. Estimated Total Revenues	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.

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 53
HUMAN RESOURCES ADMINISTRATION

~~§133-53-1. General.~~

~~1.1. Scope. This rule establishes policy in a number of areas regarding human resources administration for the employees of the West Virginia Higher Education Policy Commission (Commission) and the public higher education institutions in West Virginia. It also provides guidelines for governing boards relative to decisions pertaining to public higher education employees.~~

~~— The primary responsibility for implementation rests with the Commission, in consultation with the West Virginia Council for Community and Technical College Education (Council), who shall provide leadership and assistance to the human resources professionals within each organization to bring about the changes successfully.~~

~~1.2. Authority. West Virginia Code §18B-1B-5, §18B-4-2a, §18B-7, §18B-8, §18B-9 and §18B-9A.~~

~~1.3. Filing Date. May 2, 2013.~~

~~1.4. Effective Date. May 2, 2013.~~

~~1.5. Repeals and replaces Title 133 Series 8, Sections 3, 10, 11, 18, and 19.~~

~~§133-53-2. Purpose.~~

~~2.1. The intent of this rule is to establish a statewide, integrated human resources structure capable of, but not limited to, meeting the following objectives:~~

~~2.1.a. Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;~~

~~2.1.b. Addressing fiscal responsibility by making the best use of scarce resources and promoting fairness, accountability, credibility, transparency and a systematic (FACTS) approach to progress in personnel decision making;~~

- ~~2.1.c. Building upon human resources best practices to prevent, reduce, or, wherever possible, eliminate arbitrary and capricious decisions affecting employees of higher education organizations;~~
- ~~2.1.d. Creating a stable, self regulating human resources system capable of evolving to meet changing needs;~~
- ~~2.1.e. Providing for institutional flexibility with meaningful accountability;~~
- ~~2.1.f. Adhering to federal and state laws, promulgated and adopted rules;~~
- ~~2.1.g. Implementing, as appropriate, human resources best practices throughout the state higher education system;~~
- ~~2.1.h. Developing and implementing a classification and compensation system that is fair, transparent, understandable, easy to administer, self regulating, and adaptable to meet future goals and priorities;~~
- ~~2.1.i. Providing for careful consideration of the recommendations and supporting documentation contained in the Final Report of the Select Committee on Higher Education Personnel;~~
- ~~2.1.j. Encouraging organizations to pursue a human resources strategy which provides monetary and non-monetary returns to employees in exchange for their time, talents, and efforts to meet articulated goals, objectives and priorities of the State, the Commission and the organization;~~
- ~~2.1.k. Maximizing the recruitment, motivation and retention of highly qualified employees, ensuring satisfaction and engagement of employees with their jobs, ensuring job performance and achieving desired results; and~~
- ~~2.1.l. Providing for recommendations from the Compensation Planning and Review Committee and the Job Classification Committee to be considered by the Commission and to be included in the legislative reporting process.~~

~~§133 53 3. Definitions.~~

- ~~3.1. Base Salary. The amount or a rate of compensation for a specified position of employment or activity excluding annual experience increment and any other payments or allowances for work or activity unrelated to that specified position of employment.~~

- ~~3.2. Benchmark Job. A job that is commonly found and defined and is used to make pay comparisons, either within the organization or to comparable jobs outside the organization.~~
- ~~3.3. Benefits. Programs that an employer uses to supplement the cash compensation of employees, including but not limited to, health and welfare plans, retirement plans, pay for time not worked, and other employee perquisites.~~
- ~~3.4. Career Ladder. A structured sequence of related, upwardly progressing positions.~~
- ~~3.5. Chancellor. Chancellor refers to the chief executive officer of the West Virginia Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, as appropriate.~~
- ~~3.6. Classification System. An organized structure in which classified jobs, job descriptions, job titles, and job analyses are utilized to determine a hierarchy of jobs, career ladders and pay grade assignments.~~
- ~~3.7. Classified Employee. Any regular employee of an organization who holds a full time or part time position and is assigned a particular job and job title within the classification system established by this rule or by other duly promulgated and adopted rules of the Commission.~~
- ~~3.8. Compensation. Earnings provided by an employer to an employee for services rendered.~~
- ~~3.9. Compensation Philosophy. The guiding principles that ensure that a compensation program supports an organization's culture.~~
- ~~3.10. Compensation Strategy. The principles that guide the design, implementation and administration of a compensation program at an organization for the purpose of supporting the organization's mission, vision, goals and objectives.~~
- ~~3.11. Employee Classification or Employee Class. There are three employee classes: classified, nonclassified and faculty.~~
- ~~3.12. External Market Compensation: The external market, for purposes of evaluating relative market equity, for a classified, nonclassified or faculty position, shall be deemed to be the median compensation of substantially comparable positions in the relevant recruitment market as provided for in the approved institutional salary rule.~~

- ~~3.13. Factor. A key position trait used to evaluate a classified position according to a point factor system. The items are Knowledge; Experience; Complexity and Problem Solving; Freedom of Action; Breadth of Responsibility; Scope and Effect; Intrasystems Contacts; External Contacts; Direct Supervision Exercised; Indirect Supervision Exercised; Physical Coordination; and Working Conditions and Physical Demands.~~
- ~~3.14. Full Funding. When an organization provides, in total, one hundred percent of the funds needed to meet the salary funding target reflected in the Temporary Higher Education Classified Employee Annual Salary Schedule, as calculated in October, 2010.~~
- ~~3.15. Generic Job Description. A summary of the essential functions of a job, including the general nature of the work performed, a characteristic listing of duties and responsibilities, and the specifications necessary to perform the work.~~
- ~~3.16. Hot Jobs. Jobs which are subject to market volatility and in high demand, usually for a temporary length of time, for which there is a low supply of available workers with the required education, skills and abilities.~~
- ~~3.17. Institutions. The following entities individually or collectively Bluefield State College; Concord University; Fairmont State University; Glenville State College; Marshall University; Shepherd University; West Liberty University; West Virginia School of Osteopathic Medicine; West Virginia State University; and West Virginia University, including Potomac State College and West Virginia University Institute of Technology.~~
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- ~~3.18. Job. The total collection of tasks, duties, and responsibilities assigned to one or more individuals whose work is of the same nature and level.~~
- ~~3.19. Job Evaluation. A formal process used to evaluate classified jobs, establish proper pay grades, and slot jobs in pay grades.~~
- ~~3.20. Job Family. A series of job titles in an occupational area or group.~~
- ~~3.21. Job Title. The label that uniquely identifies and generally describes a job. The same descriptive job title shall be given to a group of jobs, regardless of location in the organization, which are substantially the same in duties and responsibilities, and which require substantially the same knowledge, skills and abilities performed under similar working conditions.~~
- ~~3.22. Major Deficiency. When an organization has failed to comply with federal or state law or with personnel rules of the Commission as identified by the human resources review.~~

- ~~3.23. Meaningful Accountability. Measures that ensure adherence to rules and policies and provides for consequences for non-compliance.~~
- ~~3.24. Merit Increases. A discretionary salary increase given to an employee to reward demonstrated achievements in the performance of the duties and responsibilities of a position, as evaluated by criteria established by the organization.~~
- ~~3.25. Nonclassified Employee. An employee of an organization who holds a position that is not assigned a particular job and job title within the classification system established by this rule, or, by other duly promulgated and adopted rules of the Commission and who meets one or more of the following criteria:~~
- ~~3.25.a. Employee holds a direct policy making position at the department or organization level; or~~
- ~~3.25.b. Employee reports directly to the president or chief executive officer of the organization.~~
- ~~3.26. Nonclassified Job Description. A summary of the most important features of a job, including the general nature and level of the work performed.~~
- ~~3.27. Organizations. The following entities individually or collectively—Bluefield State College; Concord University; Fairmont State University; Glenville State College; Marshall University; Shepherd University; West Liberty University; West Virginia School of Osteopathic Medicine; West Virginia State University; West Virginia University, including Potomac State College and West Virginia University Institute of Technology; Blue Ridge Community and Technical College; Bridgemont Community and Technical College; Eastern West Virginia Community and Technical College; Kanawha Valley Community and Technical College; Mountwest Community and Technical College; New River Community and Technical College; Pierpont Community and Technical College; Southern West Virginia Community and Technical College; West Virginia Northern Community College; West Virginia University at Parkersburg; the Office of the Higher Education Policy Commission; the Office of the Council for Community and Technical College Education; and the West Virginia Network for Educational Telecomputing.~~
- ~~3.28. Pay Grade. The level to which a job is assigned within a classification structure.~~
- ~~3.29. Peer Group. The job occupation group as recommended by the external vendor conducting the employee market salary study used to compare where each employee category falls in relation to its relevant recruitment~~

~~market.~~

- ~~3.30. Point Factor Methodology. A method used to evaluate job factors in order to determine the pay grade to which a classified position is assigned.~~
- ~~3.31. Position. A set of duties and responsibilities requiring employment of a single employee at a particular organization.~~
- ~~3.32. Position Information Questionnaire (PIQ). A tool used in the creation and evaluation of a classified position including the factors of Knowledge; Experience; Complexity and Problem Solving; Freedom of Action; Scope and Effect; Breadth of Responsibility; Intrasystems Contacts; External Contacts; Direct Supervision Exercised; Indirect Supervision Exercised; Physical Coordination; and Working Conditions and Physical Demands.~~
- ~~3.33. President. A chief executive officer of an institution of higher education in West Virginia who reports to the institution's governing board.~~
- ~~3.34. Promotion. Movement from a classified position requiring a certain level of skill, effort, and authority into a vacant or newly created classified position assigned to a different job title and a higher pay grade that requires a greater degree of skill, effort, and authority.~~
- ~~3.35. Relative Market Equity. The relative market status of each employee classification at an organization falls within five (5) percent of all other employee classifications within the organization for the preceding three-year period. A comparison of the relative market status of the three distinct employee classes wherein the range from the class furthest from its market is within five (5) percent of the class closest to its market.~~
- ~~3.36. Relative Market Status. The calculated relationship between the average salary of each employee classification and its peer group.~~
- ~~3.37. Return Rights. The right of a nonclassified employee to return to either classified status or faculty status when provided for in the employee's contract or when an employee is involuntarily transferred to a nonclassified position; provided, however, that the return right either shall be provided for in West Virginia Code, or be in writing, a copy of which is to be provided to the employee and placed in the personnel file. For return to classified status, this writing must set forth the classified job title and pay grade. For return to faculty status, this writing must set forth the appropriate faculty track, and rank.~~
- ~~3.38. Salary Benchmarking. The process of market pricing a benchmark job.~~

~~3.39. Salary Schedule. A schedule consisting of a series of pay grades enacted by the Legislature or the Commission.~~

~~3.40. Step. A standard progression in pay rate established within a pay grade.~~

~~§133 53 4. Classification and Compensation System Goals and Objectives.~~

~~4.1. The Commission, in consultation with the Council, shall implement, control, supervise, and manage a complete, uniform system of personnel classification and compensation for classified employee positions. The chief purposes of the system are to accomplish the following goals and objectives:~~

~~4.1.a. Attract well qualified and diverse applicants.~~

~~4.1.b. Retain and motivate employees to accomplish objectives, goals, and priorities in state law, rules of the Commission, state-wide master plans for higher education, and institutional compacts.~~

~~4.1.c. Retain and reward classified employees who make valuable contributions to state and organization goals, objectives and priorities.~~

~~4.1.d. Compensate employees within an organization fairly in relation to one another.~~

~~4.1.e. Compensate employees across the higher education system who are performing similar work at similar wage rates.~~

~~4.1.f. Compensate employees at levels that are competitive with appropriate external markets and are fiscally responsible.~~

~~4.1.g. Ensure that regular market salary analyses are performed to determine how organization compensation for all classes of employees compares to compensation in relevant external markets.~~

~~4.1.h. Maintain a uniform system for classifying jobs and positions of an organization's classified employees.~~

~~4.1.i. Move classified employees through the compensation system based on performance and other objective, measureable factors including education, years of experience in higher education and experience above position requirements.~~

~~4.1.j. Assign each current employee to an initial step for his or her pay grade that is closest to and exceeds his or her current salary regardless of previous education, experience or performance. The~~

~~salary of a current employee may not be reduced by a job reclassification, a modification of the market salary schedule, or other conditions that the Commission and the Council consider appropriate and reasonable.~~

- ~~4.2. The Commission, in consultation with the Job Classification Committee (JCC), shall have in place a generic job description for every classified job title.~~
- ~~4.3. The Commission, in consultation with the JCC, shall develop a Position Information Questionnaire (PIQ) to be used by all organizations to gather data necessary for classification of positions.
 - ~~4.3.a. Each organization must ensure that a PIQ shall exist for every classified position. A PIQ shall be updated at least every three years for accuracy by the employee and supervisor and submitted to human resources. Submission of an updated PIQ does not constitute a request for a classification review. A formal request must be made pursuant to section six of this rule.~~
 - ~~4.3.b. Neither the employee nor the supervisor shall place duties in the employee's PIQ that the employee is not performing, but may be expected to perform in the future.~~~~
- ~~4.4. Salary adjustments shall be made in accordance with the procedures for upgrades and downgrades specified in Commission rule or rules. During the course of its reviews, should the JCC discover the systematic misapplication of the program by an organization, it shall notify the Chancellors, who will take the appropriate action warranted.~~
- ~~4.5. Whenever the Chancellors, in consultation with the Vice Chancellor for Human Resources and the JCC determine that employees have been misclassified at the organizational level, they shall order that these classifications and salaries be immediately adjusted to the proper level.~~
- ~~4.6. Absent fraud on the behalf of the employee, any overpayment to the employee because of an erroneous classification decision by an organization shall not be collected from the employee. However, any erroneous overpayment to such an employee, once corrected, shall not be deemed as evidence in claims by other employees that the classification and compensation program is not equitable or uniform.~~
- ~~4.7. Provide that recommendations from the Compensation Planning and Review Committee (CPRC) and the JCC be considered by the Commission and the Council and be included in the legislative reporting process.~~

- ~~4.8. The Commission may allow the CPRC to collapse the three lowest pay grades into a single pay grade and provide for employees to be paid at rates appropriate to the highest of the three lowest pay grades.~~
- ~~4.9. Pursuant to State law, the Commission may not delegate to the JCC or the CPRC the following:~~
- ~~4.9.a. Approval of a classification and compensation rule;~~
 - ~~4.9.b. Approval of the job evaluation plan;~~
 - ~~4.9.c. Approval of the annual market salary schedule; and~~
 - ~~4.9.d. Approval of the annual minimum salary schedule.~~

~~§133 53 5. Job Classification Committee.~~

- ~~5.1. The Commission hereby establishes a Job Classification Committee (JCC). This committee shall replace the Job Evaluation Committee (JEC) upon the effective date of this rule. The Vice Chancellor for Human Resources shall serve as the Chair of the Job Classification Committee.~~
- ~~5.2. The JCC shall be comprised of four classified employees and six Human Resources specialists, ensuring representation from the Council institutions and the Commission institutions.~~
- ~~5.3. The Chancellor shall solicit nominations for JCC members from the Advisory Council of Classified Employees (ACCE) and the Chief Human Resources Officers (CHROs).~~
- ~~5.4. JCC members shall be appointed by the Chancellor of the West Virginia Higher Education Policy Commission, with concurrence of the Chancellor of the West Virginia Council for Community and Technical College Education, subject to approval by the Commission and Council.~~
- ~~5.5. An organization may have no more than two members serving on the Committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.~~
- ~~5.6. Committee members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.~~

~~5.7. The Commission shall use a point factor methodology to classify jobs. The Commission, in consultation with the Council, may adjust the job evaluation plan, including the factors used to classify jobs and their relative values, if necessary.~~

~~5.8. Powers and duties of the Job Classification Committee include, but are not limited to, the following:~~

~~5.8.a. Providing a system of audit for all job descriptions to make sure that the responsibilities of positions are accurately reflected;~~

~~5.8.b. Modifying and deleting jobs and assigning job titles;~~

~~5.8.c. Reviewing and revising job titles to make them consistent among organizations, including adopting consistent title abbreviations;~~

~~5.8.d. Establishing job worth hierarchies and data lines for each job title;~~

~~5.8.e. Classifying jobs, establishing proper pay grades, and placing jobs in pay grades consistent with the job evaluation plan;~~

~~5.8.f. Determining when new job titles are needed and creating new job titles within the system;~~

~~5.8.g. Recommending base pay enhancements for jobs for which the application of point factor methodology produces significantly lower salaries than external market pricing. The JCC may exercise this authority only if it reevaluates each job annually to make a determination whether the enhancement should be continued;~~

~~5.8.h. Recommending a procedure for performing job family reviews for the joint approval of the Commission and Council;~~

~~5.8.i. Determining appropriate career ladders within the classification system and establishing criteria for career progression;~~

~~5.8.j. Hearing job classification appeals prior to commencement of the formal grievance process pursuant to Commission rule or rules; and~~

~~5.8.k. Developing operational procedures which shall include, but not be limited to, the keeping of minutes which shall be recorded, posted and maintained at the direction of the Vice Chancellor for Human Resources.~~

~~5.9. The JCC shall meet monthly if there is business to conduct and also may meet more frequently at the call of the chair, given adequate lead time. A~~

~~majority of the voting members serving on the Committee at a given time constitutes a quorum for the purpose of conducting business providing that both classified staff and human resources representatives are present.~~

~~5.10. When evaluating jobs, the JCC shall use the following procedure:~~

~~5.10.a. Each JCC member shall classify each job individually, independently of other members;~~

~~5.10.b. The chair shall compile and share the individual evaluations with the whole JCC; and~~

~~5.10.c. After discussing the issues and resolving differences, the JCC shall make a determination of the appropriate classification for each job. The Vice Chancellor for Human Resources shall communicate, in writing, the JCC's decision to the CHROs and members of the JCC within ten working days.~~

~~§133 53 6. Classification Review Request of Existing Position.~~

~~6.1. An incumbent classified employee or the employee's supervisor may request a PIQ review when significant changes occur in the principal duties and responsibilities of a classified position. To initiate the review, the employee and supervisor must revise the PIQ and submit it to Human Resources along with a formal request for a review. The request must include the date and the reason for such request.~~

~~6.1.a. The responsibility for assigning tasks and duties to a position belongs to the supervisor.~~

~~6.1.b. Requests for position reviews also may be initiated by an employee with Human Resources after discussion with the immediate supervisor.~~

~~6.1.c. PIQ reviews also may be initiated by the institution's Chief Human Resources Officer or his/her designee after discussion with the immediate supervisor.~~

~~6.2. Within forty-five (45) working days from the date of the formal request for review of a PIQ, the institution's Chief Human Resources Officer or his/her designee shall report to the requestor in writing the result of the classification review.~~

~~6.3. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review~~

was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade.

~~§133 53 7. Classification Appeals Process.~~

~~7.1. The objective of classifying a position is to determine job content and its relative worth. A job's title and description are based upon the duties and responsibilities of the position, not the characteristics of the individual holding the position.~~

~~7.2. In the event that a classified employee disagrees with a classification decision made at the organizational level, he/she may appeal that decision in writing to the Vice Chancellor for Human Resources for review by the JCC. Filing a classification appeal, however, shall not abridge the rights of a classified employee to file a formal grievance, using the statutory grievance process as set forth in West Virginia Code §6C-2-1 et seq.; provided, however, upon the simultaneous filing of a statutory grievance and a classification appeal to the Vice Chancellor for Human Resources by a classified employee, a request may be made, in writing, by the classified employee to hold the grievance in abeyance until the review by the JCC is completed and a classification decision is rendered by the JCC.~~

~~7.3. Time limits.~~

~~7.3.a. The classified employee shall submit a completed "Classification Appeals Form" to the organization's Human Resources office within ten (10) working days from the date of receipt of the notice of the organization's classification decision.~~

~~7.3.b. The organization's human resources staff shall render a decision on the appeal within five (5) working days whether the original decision shall be upheld.~~

~~7.3.c. The classified employee shall have five (5) working days from the date of receipt of the notice upholding the original decision of the organization to appeal the action to the Vice Chancellor for Human Resources for submission to the JCC.~~

~~7.4. Upon receipt of the classified employee's appeal of the organization's decision, the Vice Chancellor for Human Resources shall forward the appeal to the JCC.~~

~~7.4.a. The JCC shall review the Classification Appeals Form, the original PIQ, and all supporting documentation, submitted by a classified employee to the Human Resources Office.~~

~~7.4.b. The JCC may review comparable positions within the organizations, as defined in Section 3.27 of this rule.~~

~~7.4.c. The JCC shall notify the classified employee, and the organization's Human Resources Office, of its decision in writing, within twenty (20) working days from the date of receipt of the appeal to the Vice Chancellor for Human Resources. The notification shall specify the effective date should there be any change in status.~~

~~7.5. An appeal shall not be considered if based on any of the following reasons:~~

~~7.5.a. Seniority. An appeal shall not be considered if it is based on the employee's length of service with the organization or with the state of West Virginia.~~

~~7.5.b. Qualifications of the individual incumbent. An appeal shall not be considered if it is based upon the individual classified employee's qualifications. A classification determination is based upon the requirements in the PIQ necessary to perform the duties and responsibilities of the position.~~

~~7.5.c. Anticipated future job responsibilities. An appeal shall not be considered if it is based upon responsibilities that may be included in the job assignment in the future.~~

~~7.5.d. Job Performance. An appeal shall not be considered if it is based upon the performance of the incumbent or certain personality traits (e.g., loyalty, dedication, commitment to organization, hardworking, etc.). A classification determination is based upon the level and complexity of the duties and responsibilities outlined in the PIQ, not the characteristics of the individual holding the position.~~

~~7.5.e. Salary within a salary range. An appeal shall not be considered if it is based upon the fact that an employee's salary is close to the maximum of a salary range or the relative position of the salary within the assigned salary range.~~

~~7.5.f. Increase in the volume of work. An appeal shall not be considered if it is based on the volume of work rather than the level of responsibilities and complexity of the work.~~

~~§133-53-8. Compensation Planning and Review Committee.~~

- ~~8.1. The Commission shall hereby establish and maintain a Compensation Planning and Review Committee (CPRC). The Vice Chancellor for Human Resources shall serve as the Chair of the CPRC.~~
- ~~8.2. The composition of the CPRC shall consist of the Vice Chancellor for Human Resources, the Vice Chancellor for Finance, four members representing the statewide Advisory Council of Classified Employees, two from institutions under the jurisdiction of the Council and two from institutions under the jurisdiction of the Commission; two members representing the Advisory Council of Faculty; one from institutions under the jurisdiction of the Council and one from institutions under the jurisdiction of the Commission; and two human resources administrators from institutions under the jurisdiction of the Council, and two human resources administrators from institutions under the jurisdiction of the Commission; and a president from each of the two systems.~~
- ~~8.3. The method for nominating CPRC members shall be representative of all the higher education organizations and affected constituent groups, including specifically providing for membership selections to be made from nominations from the Advisory Council of Classified Employees, the Advisory Council of Faculty, the human resources representatives, and the Council of Presidents group. The Presidents shall nominate a president from their respective systems. The Chancellors, jointly, shall appoint members from nominations made by these affected constituent groups and require approval of the Commission and Council before beginning service.~~
- ~~8.4. An organization may have no more than two members serving on the CPRC at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.~~
- ~~8.5. The CPRC members shall develop operational procedures which shall include, but not be limited to, the keeping of minutes which shall be recorded, posted and maintained at the direction of the Vice Chancellor for Human Resources.~~
- ~~8.6. The CPRC shall manage all aspects of compensation planning and review that the Commission delegates to it, within the provisions of state law.~~
- ~~8.7. CPRC members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.~~
- ~~8.8. The CPRC shall meet at least quarterly and at other times at the call of the Chair. A majority of the voting members serving on the CPRC at a given~~

~~time constitutes a quorum for the purpose of conducting business, provided that at least one member from each constituent group is present.~~

~~8.9. The CPRC has powers and duties which include, but are not limited to, the following:~~

~~8.9.a. Making annual recommendations for revisions in the system compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data;~~

~~8.9.b. Overseeing the five year external market salary study;~~

~~8.9.c. Overseeing the annual internal market review;~~

~~8.9.d. Meeting at least annually with the JCC to discuss benchmark jobs to be included in salary surveys, market "hot jobs" that may require a temporary salary adjustment, results of job family reviews, and assessment of current job titles within the classification system for market matches and other issues as the Vice Chancellor for Human Resources, in consultation with the Chancellors, determines to be appropriate;~~

~~8.9.e. Recommending to the Chancellors a process for their approval to recommend and calculate temporary salary adjustments and any time limits or reviews of these adjustments; and~~

~~8.9.f. Performing other duties as assigned by the Commission or as necessary or expedient to maintain an effective classification and compensation system.~~

~~**§133 53 9. Compensation: Classified Market Salary Structure and Minimum Salary Schedule.**~~

~~9.1. The Commission and Council shall develop and maintain a market salary structure and minimum salary schedule and ensure that all organizations under its jurisdiction adhere to state and federal laws and duly promulgated and adopted organization rules.~~

~~9.2. The Commission and Council shall jointly contract with a qualified external vendor to conduct a market salary study for each category of employees at least once within each five year period. Based on the study results, the Commission and Council, in consultation with the CPRC, and taking into consideration the recommendations of the external vendor, may take any combination of the following actions in regard to the classified market salary structure:~~

~~9.2.a. Adjust the number of pay grades;~~

~~9.2.b. Adjust the point values necessary for a job to be assigned to a particular pay grade;~~

~~9.2.c. Adjust the midpoint differentials between pay grades to better reflect market conditions; or~~

~~9.2.d. Adjust the range spread for any pay grade.~~

~~9.3. The Commission, in consultation with the Council, may perform an annual review of market salary data to determine how salaries have changed in the external market. Based on supporting data derived from that review, the Commission and Council, with input from the CPRC, shall adjust the market salary structure. In the absence of a market salary study conducted by a qualified external vendor, the Commission and Council may not adjust the midpoint differentials between pay grades unless required to do so by a change in minimum wage or other laws or regulations and may not adjust the range spread for any pay grade.~~

~~9.4. The market salary structure serves as the basis for the following activities:~~

~~9.4.a. Evaluating compensation of classified employees in relation to appropriate external markets. The external market compensation for a job shall be deemed to be the median compensation of substantially comparable positions in the relevant recruitment market; and~~

~~9.4.b. Developing the minimum salary schedule to be adopted by the Commission and Council. No organization may compensate a classified employee at a salary rate of less than the minimum salary rate values provided for in the minimum salary schedule.~~

~~9.5. The market salary structure shall include the following criteria:~~

~~9.5.a. The number of pay grades and steps to be included in the structure;~~

~~9.5.b. A midpoint value for each pay grade which represents the average salary of jobs in that pay grade. The Commission and Council may choose a midpoint step value at its discretion, based on its compensation philosophy, which need not be based exclusively on market salary data; and~~

~~9.5.c. The minimum and maximum step values based on an established range spread, as well as values for other steps in the salary structure.~~

- ~~9.6. The Commission and Council may annually approve a minimum salary schedule that sets forth a compensation level for each step and pay grade below which no organization employee may be paid.~~
- ~~9.7. The minimum salary floor for each pay grade and step on the minimum salary schedule shall be at an appropriate percentage of the most recent annual market salary data, to be determined by the Commission and Council. The Commission and Council also shall consider the minimum wage and other laws that ensure that employees earn a living wage and shall maintain a salary structure which ensures that the average salary of each class of employees meets relative market equity among employee classes. The Commission and Council may take into consideration other factors they consider appropriate.~~
- ~~9.8. The external market, for purposes of evaluating relative market equity, for a classified, nonclassified or faculty position, shall be deemed to be the median compensation of substantially comparable positions in the relevant recruitment market, as provided for in the approved institutional salary rule.~~
- ~~9.9. The salary of a classified employee working fewer than thirty seven and one-half hours per week shall be prorated. The organization's salary rule may provide for differential pay for certain classified employees who work different shifts, weekends or holidays.~~
- ~~9.10. Merit increases may be granted if they are in accordance with state code and with duly promulgated rules of the Commission.~~

~~§133-53-10. Salary Benchmarking.~~

- ~~10.1. The Commission will utilize an experienced compensation consultant to perform the functions related to salary benchmarking.~~
- ~~10.2. Job descriptions representative of all categories of employees will be reviewed to ensure that the duties and responsibilities are understood so that appropriate matches can be made to benchmark positions. The following guidelines will be used for benchmark selection:~~
- ~~10.2.a. Representation of all job families and levels throughout the system.~~
 - ~~10.2.b. Highly populated jobs.~~
 - ~~10.2.c. Jobs found in most of the system institutions.~~
 - ~~10.2.d. Jobs with recruitment or retention problems.~~
 - ~~10.2.e. Geographic differentials as necessary will be used to ensure that the~~

data are reflective of the labor market and economic conditions.

~~§133-53-11. Full Funding: Temporary Higher Education Classified Employee Annual Salary Schedule.~~

- ~~11.1. Once the Commission has certified that an organization under its jurisdiction has achieved full funding of the Temporary Higher Education Classified Employee Annual Salary Schedule, the organization's governing board has the authority to pay classified employees in excess of the salary on the Temporary Higher Education Classified Employee Annual Salary Schedule for their pay grade and years of experience, as long as the governing board has a salary rule in place ensuring that salary increases above the salary schedule are distributed equitably and in a manner consistent with the uniform classification and compensation system.~~
- ~~11.2. An organization has achieved full funding of the Temporary Higher Education Classified Employee Annual Salary Schedule when it provides, in total, one hundred percent of the funds needed to meet the salary funding target as calculated in October 2010. When an organization is fully funded, the Chancellor shall provide official certification that the organization has attained full funding of the Temporary Higher Education Classified Employee Annual Salary Schedule.~~
- ~~11.3. Until an organization is fully funded or making appropriate progress as defined in this rule, the following restrictions apply:
 - ~~11.3.a. Classified salary increases distributed within the organization shall be provided in accordance with the uniform classification and compensation system established by §18B-9A-1 et seq.~~
 - ~~11.3.b. An organization may not provide discretionary salary increases including performance or merit based increases to the president or chief executive or any group or class of employees, other than classified employees.~~~~
- ~~11.4. An organization is considered to be making appropriate progress when it has funded at least twenty five percent of the amount needed to reach full funding of the Temporary Higher Education Classified Employee Annual Salary Schedule by July 1, 2012; has funded at least fifty percent of the calculated amount by July 1, 2013; has funded at least seventy five percent of the calculated amount by July 1, 2014 and has funded one hundred percent of the calculated amount by July 1, 2015.~~
- ~~11.5. Until such time that a new salary schedule is implemented, the current Temporary Higher Education Classified Employee Annual Salary Schedule, consisting of a minimum annual salary for each pay grade in~~

~~accordance with experience in West Virginia higher education or West Virginia state government, shall be in place. An employee is considered equitably compensated if his or her salary is at the minimum salary on the Temporary Higher Education Classified Employee Annual Salary Schedule that is required for his or her pay grade and years of experience on the July 1, 2001 salary schedule.~~

~~§133-53-12. Classification System Methodology Audit.~~

~~12.1. By July 1, 2014 and at least once within each five year period thereafter, the Commission and Council shall review the effectiveness of the system for classifying jobs and submit an in depth report to the Legislative Oversight Commission on Education Accountability. The report shall include, but is not limited to, findings, recommendations and supporting documentation regarding the following job classification issues:~~

~~12.1.a. The effectiveness of the point factor methodology and a determination of whether it should be maintained; and~~

~~12.1.b. The status of the job evaluation plan, including the factors used to classify jobs or their relative values, and a determination of whether the plan should be adjusted.~~

~~§133-53-13. Nonclassified Employees.~~

~~13.1. By July 1, 2013, the percentage of personnel placed in the category of nonclassified may not exceed twenty five percent of the total number of classified and nonclassified employees of that organization.~~

~~13.2. Except as otherwise provided for in this rule, by July 1, 2015, the percentage of personnel placed in the category of nonclassified may not exceed twenty percent of the total number of classified and nonclassified employees of that organization.~~

~~13.3. Organizations may request an extension to July 1, 2016, to comply with the requirement that the percentage of personnel placed in the category of nonclassified may not exceed twenty percent of the total number of classified and nonclassified employees of that organization. If an extension is granted, it may not exceed twenty five percent and it must be approved in advance of implementing such extension, by both the institution's governing board and the Commission.~~

~~13.4. In establishing return rights of a nonclassified employee to classified status, the return rights must be evidenced in writing, provided to the employee and placed into the employee's personnel file, and must articulate the job title and pay grade. If the institution's compensation system establishes discretion as to placement on the salary schedule, then an indication of that~~

placement must be specified.

- ~~13.5. In establishing return rights of a nonclassified employee to faculty status, the return rights must be evidenced in writing, provided to the employee and placed into the employee's personnel file, and must articulate faculty track, tenure status if any, faculty rank if any, faculty job title, faculty compensation rate, and if non-tenured, whether the faculty status would be for a term, defined in the document, or for the remainder of the academic or fiscal year following separation from nonclassified status.~~
- ~~13.6. Classified employees who were involuntarily transferred to non-classified positions have the right to return to classified positions based on West Virginia Code provisions.~~
- ~~13.7. When an organization counts, as faculty or classified staff, those administrators who retain the right to return to faculty or classified positions, these designations apply only to the calculation of the organization's compliance with the statutory maximum ratio of nonclassified employees and are to be treated and counted as nonclassified employees for all other purposes. An organization shall report to the Commission all nonclassified employees who retain return rights to either a classified or faculty position in the category of "nonclassified" in all data submissions or analysis other than the determination of the ratio of nonclassified employees, including but not limited to the analysis of relative market equity.~~
- ~~13.8. The current annual salary of a nonclassified employee may not be reduced if his or her position is redefined as a classified position solely to meet the requirements of West Virginia Code §18B-7-11. If such a nonclassified employee is reclassified, his or her salary does not constitute evidence of inequitable compensation in comparison to other employees in the same pay grade.~~

~~§133-53-14. Employee Performance Evaluations.~~

- ~~14.1. After a classified employee's probationary period, during which 3-month and 6-month probationary performance evaluations are required, each employee shall receive a written evaluation of his or her job-related performance on an annual basis. A copy of the evaluation document shall be placed into the employee's personnel file and must include confirmation, through a physical or an electronic signature of the employee, signifying that the employee has participated in the evaluation process.~~
- ~~14.2. Organizations shall conduct regular performance evaluations of non-classified employees and faculty as well as classified employees.~~

- ~~14.3. Each organization shall develop a consistent, objective performance evaluation system and evaluation instrument(s).~~
- ~~14.4. Organizations shall train supervisors in the best practices of conducting employee performance evaluations.~~
- ~~14.5. Supervisors who fail to conduct evaluations of those employees who report to them, according to their organization's policies, may be subject to disciplinary action.~~

~~§133-53-15. Training and Development.~~

- ~~15.1. The Vice Chancellor for Human Resources shall carry out the following duties related to training and development:~~

- ~~15.1.a. Analyzing and determining training needs of organization employees and formulating and developing plans, procedures and programs to meet specific training needs and problems. Successful completion of these tasks requires the Vice Chancellor for Human Resources to work closely with and communicate regularly with the training and development coordinators employed by each organization.~~

- ~~15.1.b. Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers.~~

- ~~15.1.c. Planning, conducting, and coordinating management inventories, appraisals, placement, counseling and training.~~

- ~~15.1.d. Coordinating participation by all employees in training programs developed internally or provided by outside contractors.~~

- ~~15.1.e. Administering and analyzing an annual training and development needs survey. The survey may coincide with the completion of the annual performance review process.~~

- ~~15.1.f. Developing model supervisor training programs in order to provide guidance in best practices related to supervision of subordinates and compliance with federal and state employment laws and rules of the Commission.~~

- ~~15.1.g. Developing training and professional development programs for personnel who administer human resources functions at each organization in response to performance reviews of those personnel, which are conducted at least once every three years.~~

~~15.2. The Commission shall assist organization human resources professionals in applying Fair, Accountable, Credible, Transparent, and Systematic (FACTS) principles to all human resources functions and shall provide model training programs to organizations upon request for assistance.~~

~~15.3. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for faculty or staff pursuing additional academic study or training to better equip themselves for their duties.~~

~~15.4. Subject to legislative appropriation therefore, the Commission shall provide additional, regular training and professional development for human resources employees and any appointees to committees appointed by this rule. The training and development shall be:~~

~~15.4.a. Mandatory with appropriate consideration given to limiting travel demands on employees; and~~

~~15.4.b. In addition to and may not supplant the training and professional development regularly provided to any class of employees by each organization.~~

~~15.5. An account of the total amount, type of training or professional development provided, the number of employees who participated and the overall cost of the training and professional development provided to employees shall be provided to the Commission by the organizations as part of the annual personnel reports at a time designated by the Commission.~~

~~§133-53-16. Organizational Rules.~~

~~16.1. Each institution shall amend any of its policies/rules to comply with the Commission's rule or rules no later than six months after the effective date of any change in statute or Commission rule or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.~~

~~16.2. An institution may not adopt a rule, as mandated by this subsection, until it has consulted with the appropriate employee classes affected by the institution's rule or rule's provisions. At a minimum, consultations with the institutional Classified Employees Council (staff council) and/or the institutional Faculty Senate (faculty senate), as appropriate, shall take place.~~

- ~~16.3. If an institution fails to adopt a rule or rules as mandated by this subsection, the Commission may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a Commission rule until the organization's rule requirements have been met.~~
- ~~16.4. An institution may exercise additional flexibility or areas of operational discretion identified in statute or in Commission rule or rules when it meets the following requirements:~~
- ~~16.4.a. Receives certification from the Commission that the institution has achieved full funding of the Temporary Higher Education Classified Employee Annual Salary Schedule or is making appropriate progress toward achieving full funding.~~
- ~~16.4.b. Promulgates a comprehensive salary rule or rules as required by statute.~~
- ~~16.4.c. Receives approval for the salary rule from the Chancellor.~~
- ~~16.4.d. Adopts the rule by vote of the institution's governing board.~~
- ~~16.5. The Chancellor or his or her designee has the authority and the duty to review each institution's salary rule or rules and to recommend changes to the rule or rules to bring them into compliance with state and federal law, Commission rule or rules or legislative and Commission intent. The Chancellor may reject or disapprove any rule or rules, in whole or in part, if he or she determines that it is not in compliance with any law or rule/rules or if it is inconsistent with Legislative and Commission intent or does not sufficiently address and include measures that foster meaningful accountability of the institution to this rule, its own rules and state and federal law.~~

~~§133 53 17. Organizational Accountability.~~

- ~~17.1. The Commission shall conduct a systematic human resources review of each organization by an external vendor possessing experience and expertise in conducting these reviews every five years, subject to Legislative appropriation. The first review shall be completed no later than June 30, 2013.~~
- ~~17.2. The review shall focus on highlighting strengths and identifying and correcting any deficiencies in complying with state and federal law and in adhering to personnel rule or rules of the Commission.~~

~~17.3. The Commission shall provide organizations with reasonable notice prior to conducting a human resources review and shall identify the subjects to be examined in the review.~~

~~17.4. A major deficiency means an organization has failed to comply with federal or state law or with personnel rules of the Commission. The following guidelines exist for correcting deficiencies should any be found:~~

~~17.4.a. When a major deficiency is identified, the Commission shall notify the governing board of the institution in writing within forty working days, giving particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.~~

~~17.4.b. The governing board shall correct the major deficiency within four months and shall notify the Commission when the deficiency has been corrected; however, extensions of this time frame may be requested and granted by the Commission.~~

~~17.5. If the governing board fails to correct the major deficiency or fails to notify the Commission that the deficiency has been corrected within a period of four months from the time the governing board receives notification, the Commission shall apply sanctions as specified:~~

~~17.5.a. A formal reprimand shall be placed in the personnel file of each key administrator who shares responsibility and has operational authority in the area of the identified deficiency. The maximum period of time this reprimand shall remain in the personnel file shall be one year.~~

~~17.5.b. Other sanctions may include, but are not limited to, suspending new hiring by the organization and prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.~~

~~17.6. To the extent that major deficiencies are identified relative to the Commission central office the sanctions described above shall be applicable.~~

~~17.7. The Vice Chancellor for Human Resources shall report annually to the Commission on each institution under its jurisdiction on its adherence to this rule, the institution's own rules and both state and federal law regarding personnel and accountability.~~