

WEST VIRGINIA
SECRETARY OF STATE
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATIONAL ACCOUNTABILITY

AGENCY: State College System Board of Directors TITLE NUMBER: 131

CITE AUTHORITY: -WV Code 18B-3-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Correspondence, Business, Occupational,
and Trade Schools

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A
PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR
FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATIONAL ACCOUNTABILITY FOR THEIR REVIEW.

Marie Carter

Signature

Marie Carter
Special Assistant to the Chancellor

14.90

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 131, Series 3, Correspondence, Business, Occupational and Trade Schools

Type of Rule XXX Legislative _____ Interpretive _____ Procedural

Agency State College System Board of Directors

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 19,992.17	\$ 20,828.02	\$ 22,114.98
Personal Services	0	0	14,512.17	15,528.02	16,614.98
Current Expense	0	0	2,000.00	2,200.00	2,400.00
Repairs and Alterations	0	0	0.00	0.00	0.00
Equipment	0	0	480.00	100.00	100.00
Other	0	0	3,000.00	3,000.00	3,000.00

2. Explanation of above estimates

The activities associated with this rule are presently being conducted as required by state statute. No additional expenses other than normal personal services salary increases and a slight current expense increase will be incurred.

3. Objectives of these rules

To provide clarification to state statute and put in place guidelines for the issuance of permits to correspondence, business, occupational and trade schools.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

No significant impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

No significant impact

C. Economic Impact on Citizens/Public at Large

No significant impact

Date: 10-27-94

Marie Carter

Signature of Agency Head or Authorized Representative

**TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 3**

Summary. Series 3 responds to legislation which was enacted during the 1992 legislative session, and amended during the 1994 session, requiring the State College System Board to promulgate a rule regarding the issuance of permits to correspondence, business, occupational and trade schools. It grants to the State College System Board the authority to issue permits and monitor the operations of these schools. The rule describes guidelines under which these schools may obtain a permit to solicit students or operate a school in the State of West Virginia. Additionally, the rule formulates and describes guidelines regarding areas such as school closings, student enrollment contracts, student complaint procedures, refund policies, advertising and withdrawal of approval to operate.

**TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 3**

**TITLE: CORRESPONDENCE, BUSINESS, OCCUPATIONAL, and TRADE
 SCHOOLS**

SECTION:		PAGE
1	General	1
2	Definitions	1
3	Exemptions	3
4	Application for Permit	4
5	Permit Application Fee	5
6	Surety Bond Requirements	6
7	Maintenance of Records	7
8	Change of School Ownership	8
9	School Closing	9
10	Student Enrollment Contract	9
11	Cancellation and Refund Policies	10
12	Advertising	12
13	Student Complaints	14
14	Warning, Suspension, Withdrawal or Revocation of Accreditation, License, and/or Approval to Operate	15

- 2.6 Correspondence School An educational organization which, for a consideration, profit, or tuition, teaches or instructs in any subject that prepares an individual for employment solely through the medium of correspondence between the student and the school, and by which the school transmits to or exchanges matter with the student via printed material, video tapes, cassette tapes, telecommunications, or other means.
- 2.7 Financially Sound Meeting two of the following: a current ratio of at least 1:1 regarding total current assets compared to total current liabilities, positive total equity, or current year profitability.
- 2.8 Immediate Family Spouse, parent, sibling, child, or grandchild.
- 2.9 Ownership Change When the change of ownership results in a change in control of the school outside the immediate family.
- 2.10 Person Any individual, group of individuals, partnership, association, organization, business, trust, corporation, or other business entity.
- 2.11 Business, Occupational, or Trade School An institution, organization, or entity no matter how titled, maintaining or conducting classes or instruction for a consideration, remuneration, or tuition, designed to prepare an individual for employment or enhance employment skills.
- 2.12 Representative Any person representing a school, whether such school is located within or outside of the State of West Virginia, or acting as an agent, solicitor, procurer, broker, or independent contractor to produce students or enrollees for any such school by solicitation in any form at any place in this state.
- 2.13 School Business, occupational, trade, or correspondence school.
- 2.14 Specialized Associate Degree Degree that may be awarded by accredited schools pursuant to a degree program of not less than two (2) academic years.

- 2.15 State The State of West Virginia.
- 2.16 Terms Regularly established divisions of the academic school year, each with an established starting and ending date, which are normally referred to as modules, quarters, trimesters, or semesters.

SECTION 3. EXEMPTIONS

- 3.1 For the purpose of this rule, the following are not defined as a correspondence, business, occupational, or trade school:
- 3.1.1 Any school or person licensed or approved to offer education or training by any other statutory licensing or accrediting agency pursuant to statutes of the West Virginia Code other than 18B-3-5.
 - 3.1.2 Any school or organization whose courses of instruction offered are solely for the purpose of teaching preparation of tax returns.
 - 3.1.3 Any school conducted by any person, solely on a contractual basis with private or governmental organizations where obtaining a permit is not a condition of the contract and students are not charged tuition or other fees, and no advertisement of courses takes place.
 - 3.1.4 Any training or apprenticeship program conducted by a company, union, or other organization in which students, members, or employees enrolled in the training or educational programs are not charged tuition or other fees.
 - 3.1.5 Schools that offer courses which are conducted solely for personal development or information, do not prepare or represent themselves as preparing an individual for a career or enhancing employment opportunities, are not offering sequential courses comprising an entire program and are not offering courses for more than twenty-four (24) weeks per calendar year.
 - 3.1.6 Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in public or private schools.

3.1.7 Non-profit independent colleges, universities, and other non-profit entities that are accredited by a regional accrediting agency recognized by the United States Department of Education.

3.1.8 Public colleges, universities, and schools under the jurisdiction of the State College System of West Virginia, the University System of West Virginia, or the West Virginia Board of Education.

SECTION 4. APPLICATION for PERMIT

4.1 Unless exempted as defined in Section 3 of this rule, no person or corporation shall solicit students or operate any correspondence, business, occupational, trade school, or branch campus in the state without first applying for or obtaining a permit issued by the board. A permit shall be issued authorizing the solicitation of students and/or authorizing the operation of a school if all conditions of the laws and regulations of this state pertaining to correspondence, business, occupational, and trade schools are met.

4.2 If a person as defined in Section 2 of this rule wishes to operate or continue to operate a school or branch campus or to solicit students in the state, that person shall submit an original application for a permit to do so on forms provided by the board.

4.3 As a condition of the issuance of a permit, a school shall submit with the application:

4.3.1 A copy of the curriculum and description of courses for each program being offered;

4.3.2 A copy of the student enrollment contract;

4.3.3 A copy of the school's tuition refund policy and schedule;

4.3.4 A fully executed surety bond in the appropriate amount;

4.3.5 The appropriate permit fee;

4.3.6 A list of all representatives of the school who will be soliciting students; and

4.3.7 If accredited, documentation from the accrediting agency regarding accreditation status.

- 4.4 Persons shall not be deemed to have submitted an initial application for a permit to operate a school or solicit students in this state unless a properly completed application, the application fee, the required surety bond, and all other information and documentation required by this rule has been submitted to the board and the following has been provided:
- 4.4.1 A listing of the individual's or organization's prior school operation history in this state, other states, or other countries.
 - 4.4.2 Information detailing the involvement in, or relationship to, any school that lost its accreditation, lost its authorization to operate because of violation of state or federal laws, was terminated from participation in the federal financial aid programs, closed without arranging a teach-out for students or arranging refunds, or other discharge of the school's contractual obligation to the student.
 - 4.4.3 Proof at the time of filing an initial application that adequate facilities are available and ready for occupancy and that all instructional equipment, books, supplies, and personnel are in place and ready for operation and verified by an on-site visit by a representative of the board.
- 4.5 As a condition of permit renewal, all schools shall make annual reports to the board on forms furnished by the board.
- 4.6 In addition to the requirements set forth above, all out-of-state schools shall annually provide evidence of authority to operate or accreditation by the regulatory agency of each state in which the school is located or conducts business.
- 4.7 A permit shall be valid for one year corresponding to the effective date of the surety bond as required herein.
- 4.8 Any information of a confidential or proprietary nature provided to the board by a school for the purpose of obtaining or renewing a permit, and exempted from public disclosure pursuant to the terms of West Virginia Code § 29B-1-4, shall not be disclosed for any purposes inconsistent with this rule or statute.

SECTION 5. PERMIT APPLICATION FEE

- 5.1 Any person applying for a permit to solicit students or operate a school, as defined by this rule, or branch campus in this state shall submit an

initial application fee in the amount of two thousand dollars (\$2,000) with the application.

- 5.2 Any person applying for renewal of a permit shall submit an annual fee of five hundred dollars (\$500) with the renewal application for each campus operated by the school.
- 5.3 Any person submitting a permit renewal application and surety bond more than sixty (60) days after the last effective date of the applicant's previous surety bond shall be considered a new applicant for the purpose of paying the initial application fee.

SECTION 6. SURETY BOND REQUIREMENTS

- 6.1 A school located in the state shall submit with its initial or renewal application, the original fully executed continuous surety bond written by a company authorized to do business in this state in the sum of fifty thousand dollars (\$50,000) unless required otherwise by a provision of this section.
- 6.2 Any school which has its physical facilities located in this state and has operated in this state under the present ownership, or ownership control within the immediate family, for at least ten (10) years as of June 10, 1994, is required to submit with its renewal application the original copy of a fully executed continuous surety bond written by a company authorized to do business in this state in the sum of thirty-five thousand dollars (\$35,000).
- 6.3 Schools having branch campuses within this state shall provide one fully executed surety bond in the appropriate amount providing coverage for all campuses.
- 6.4 In the event of notice of cancellation of the surety bond by a bonding company, the school shall furnish a fully executed replacement to the board within sixty (60) days of the school's receipt of the notice of cancellation. But in no event may a school solicit or enroll new students until the appropriate surety bond is in effect.
- 6.5 The termination of a school's surety bond coverage shall be grounds for revocation of its permit if the school fails to replace the bond within the required time.

- 6.6 A school whose physical facilities are located outside this state, and which applies for a permit to solicit students in this state, shall submit a fully executed surety bond in the sum of fifty thousand dollars (\$50,000).
- 6.7 The board may increase the bond requirement of any school to one hundred fifty thousand dollars (\$150,000) if the school has its accreditation terminated or its institutional eligibility under the Higher Education Act of 1965, as amended, is terminated for cause.
- 6.8 If, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the school is not financially sound as defined in Section 2 of this rule, the board may require the surety bond be increased up to an amount not to exceed four hundred thousand dollars (\$400,000) if the board determines an increased bond is reasonably necessary to protect the financial obligations legally due to the students then enrolled at the institution.
- 6.9 Confidentiality Statement - any financial information submitted to the board by a school covered under this rule shall be used by the board only for purposes of this rule.

SECTION 7. MAINTENANCE of RECORDS

- 7.1 A school shall maintain records at a central location and have them available for inspection by a representative of the board.
- 7.2 A school shall maintain academic records suitable for transcript purposes for each student for fifty (50) calendar years after the student has departed the school, or until the student becomes 65 years of age. The records shall include, as a minimum:
- 7.2.1 The name and address of the school;
 - 7.2.2 The full name and address of the student;
 - 7.2.3 The starting and completion or separation dates;
 - 7.2.4 The course of instruction or subject;
 - 7.2.5 The amount of credit, if any;
 - 7.2.6 The grade for each subject; and

7.2.7 A statement indicating whether the student graduated or completed the course.

7.3 A school shall develop and enforce security measures to protect student records from damage or destruction for the required period of time.

SECTION 8. CHANGE of SCHOOL OWNERSHIP

8.1 A school must notify the board at least thirty (30) days in advance of the change of ownership control. Within thirty (30) days of such notification, the board will notify the school of permit status.

8.2 When a school is located in this state and has a change of ownership control and the new ownership control is outside of the immediate family of the previous owner, the school may continue to operate under the present permit. However, before the solicitation of students can continue, the school shall submit to the board the following:

8.2.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000).

8.2.2 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school, and the names and addresses of any other schools in which these persons or entities have or have had a financial interest.

8.2.3 A revised listing of all programs to be offered if changes were made with new ownership.

8.2.4 An application for each representative of the school who will be soliciting students.

8.3 If the school is located outside this state, the school must show evidence of compliance with the laws and regulations in the state where the school is located. In addition, before the solicitation of students continues in this state, the school must submit the following:

8.3.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000);

8.3.2 An application for each representative of the school that will be soliciting students in West Virginia;

- 8.3.3 A revised listing of all programs to be offered if changes are made with new ownership; and
- 8.3.4 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school.

SECTION 9. SCHOOL CLOSING

- 9.1. A school which is closing, either voluntarily or involuntarily, shall:
 - 9.1.1 Inform the board of this action immediately by certified mail;
 - 9.1.2 Supply the board with the name, address, and telephone number of the person responsible for closing arrangements;
 - 9.1.3 Supply the board with the name, address, telephone number, and the course of study for each student who has not completed his or her course of study;
 - 9.1.4 Supply the board with information on the dates of enrollment, the amount of class time left for each student to complete the course, and the amount of entitled refund, if any, for which each student is eligible;
 - 9.1.5 Inform currently enrolled students by written notice of the appropriate procedures they are to follow to secure refunds due if suitable teachouts have not been arranged, or to continue their education and supply the board with a copy of this notice; and
 - 9.1.6 Inform the board and currently enrolled students of plans to store the permanent student records and the procedure to obtain copies.

SECTION 10. STUDENT ENROLLMENT CONTRACT

- 10.1 Before the schooling begins, all students shall receive a completed, signed and dated enrollment contract specifying both the school's and student's legal rights and obligations. The agreement may incorporate into the contract by reference information in the school's catalog, student handbook, or other school publication without printing such information or publication in the contract itself. The enrollment contract must contain, but is not limited to, the following:
 - 10.1.1 The name and address of the school;

- 10.1.2 The name of the course of study or program, including the number of credit or clock hours of classroom instruction, home study lessons, or other study units required;
 - 10.1.3 The total cost of the course, term or program for which the student is obligated under the contract including tuition, fees, books, and any other charges the student will incur shall be clearly stated;
 - 10.1.4 The school's cancellation and refund policy including an explanation of the procedures a student will follow to cancel the contract or enrollment agreement; and
 - 10.1.5 The signature of the student applicant, a parent or other sponsor if the student is under the age of eighteen (18), and the appropriate school officials, plus the date signed.
- 10.2 An application for admission is not to be construed as binding on the student, therefore limiting total student financial obligation to the payment of an application fee.
 - 10.3 The school shall provide the student with a copy of the completed enrollment agreement that is signed and dated.
 - 10.4 Those schools that are accredited by an national or regional accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding student enrollment contracts to satisfy the requirements of this section. However, in the event that enrollment contracts are not addressed by accrediting agency criteria, the provisions of this section must be followed.

SECTION 11. CANCELLATION and REFUND POLICIES

- 11.1 To obtain a permit a school shall have a cancellation and refund policy that incorporates the following provisions:
 - 11.1.1 A statement relative to the unused portion of tuition, fees, and other charges if the student does not begin classes, withdraws, or is dismissed.
 - 11.1.2 All fees and payments remitted to a school by a prospective student shall be refunded, minus any stated application fee not to exceed fifty dollars (\$50), if the student is not admitted due to ineligibility.

- 11.1.3 An admitted student applicant may cancel, by written notice, his or her enrollment any time prior to the first class day of the session for which the application was made, and the school shall refund all tuition paid by the student minus an application fee not to exceed fifty dollars (\$50).
- 11.1.4 For the purposes of refund calculations, an individual's status as a student shall be considered terminated by the school not later than seven (7) calendar days after the last day on which the student actually attended the school. Termination may be effected earlier by proper notification. A home study program of instruction shall be terminated if a school does not receive a lesson or an appropriate response from the student within six months after receipt of the last lesson, and the date of withdrawal shall be the date of the last lesson received. The date of withdrawal initiated by a student shall be the date a letter is postmarked or proper notification is given. The school shall provide a receipt for the letter or withdrawal notice received.
- 11.1.5 Schools are required to submit refunds to individuals or the appropriate agency within twenty (20) days after receipt of a proper notification of termination from a student.
- 11.1.6 The student refund policy for withdrawals and terminations for schools not accredited by an accrediting agency recognized by the United States Department of Education must at a minimum comply with the following:
- 11.1.6.1 A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges less the application fee.
- 11.1.6.2 A student who begins a term and withdraws after completing more than ten percent (10%) through twenty-five percent (25%) of the term is entitled to a refund of seventy-five percent (75%) of the charges less the application fee.
- 11.1.6.3 A student who withdraws after completing more than twenty-five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges less the application fee.

- 11.1.6.4 A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund.
- 11.2 Refunds shall be calculated for a specific term as defined in Section 2 of this rule, or the total cost of programs not exceeding one year. In the event that students are financially obligated for a year-long program, the refund policy shall be on a weekly prorata basis through the first sixty percent (60%) of the program. The student's financial commitment shall not be for more than one year at any given time.
- 11.3 Those schools that are accredited by a national or regional accrediting agency recognized by the United States Department of Education, may use the accrediting agency's refund policy to meet the requirements of this section.
- 11.4 Those schools having their physical facilities located outside this state must comply with the cancellation and refund policies of their home state. If there is no state cancellation and refund policy in their home state, Section 11 of this policy must be followed.

SECTION 12. ADVERTISING

- 12.1 Each school and its representatives shall not make or cause to be made any oral, written, or visual presentation in connection with the offering or publicizing of a subject or course of instruction which is false or misleading.
- 12.2 In its advertising, a school shall:
- 12.2.1 Limit reference to its authority to operate to "Permit to Operate Issued by the Board of Directors of the state College System of West Virginia";
 - 12.2.2 Disclose that it is a home study school if it provides such instruction;
 - 12.2.3 Advertise starting or average salaries of its former students only if these claims can be documented for the most recent twelve-(12) month period preceding the advertisement for more than fifty percent (50%) of the graduating class.
- 12.3 In its advertising, a school shall not:

- 12.3.1 Advertise that it is "supervised," "recommended," "endorsed," "approved," or "accredited" by the board;
 - 12.3.2 Describe its courses of instruction and subjects in a misleading manner.
 - 12.3.3 Use photographs or other illustrations in ways which misrepresent the size and location of the school, its equipment and facilities for the career for which the student is being trained;
 - 12.3.4 Represent that it is endorsed by or affiliated with a college or university, unless such statements can be documented;
 - 12.3.5 Advertise or indicate in any manner the transferability, or possibility of transferability, of its credits to colleges and universities unless it has written evidence on file of current acceptability of such credits from said colleges or universities;
 - 12.3.6 Advertise that it is endorsed by manufacturers, business establishments, or organizations engaged in the line of work for which the school gives training unless written documentation regarding the endorsement is on file;
 - 12.3.7 Advertise accredited status unless such status has been received from an accrediting body currently listed as recognized by the United States Department of Education and such accrediting body must be named if used in any advertisement or promotional material;
 - 12.3.8 Advertise as an employment agency, or under the same or similar name as such an agency, or advertise training courses in the "Help Wanted" section of any newspaper;
 - 12.3.9 Advertise any tuition, fees, or other charges in amounts other than those currently on file in the chancellor's office or advertise them without showing the total costs;
 - 12.3.10 Falsely guarantee job placement or employment at a certain wage;
or
 - 12.3.11 Use endorsements, commendations, or recommendations by students without their written consent.
- 12.4 A school eligible to offer a course of instruction or program leading to an associate degree or specialized associate degree shall, in any

advertisement, promotional material, or the school catalogue refer to this degree designation as an "Associate Degree" or a "Specialized Associate Degree."

- 12.5 Those schools that are accredited by a national or regional accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding advertising to satisfy the requirements of this section. However, in the event that advertising is not addressed by accrediting agency criteria, the provisions of this section must be followed.

SECTION 13. STUDENT COMPLAINTS

- 13.1 A school shall attempt to resolve student complaints promptly and fairly and shall not subject a student to punitive action as a result of a written complaint having been filed with the school or board.
- 13.2 The school shall have written procedures that describe in detail how a student may register a complaint with the school and board, and how the school will investigate and attempt to resolve the complaint.
- 13.3 The board will begin the investigation of a written complaint within thirty (30) days of the date of receipt of the complaint unless it is a complaint regarding a matter over which the board has no jurisdiction or it is intrinsically not credible. The initial investigation should be completed within sixty (60) days of the filing of the complaint.
- 13.4 The school shall provide all enrolled students with a written copy of the student complaint procedures and make prospective students aware that such procedures exist and provide copies upon request.
- 13.5 Each school that is being investigated, as a result of a written student complaint, will be notified by the board that such an investigation is being conducted, and a copy of the written complaint will be forwarded to the school. The name of the complainant may be withheld if so requested.
- 13.6 The school being investigated must respond to any inquiry by the board relating to the investigation within ten (10) work days of its receipt of the inquiry.
- 13.7 Any school refusing to cooperate with an investigation of a written student complaint by the board or any other governmental agency shall have its permit to operate or solicit students in West Virginia revoked in accordance with the due process provisions of Section 14 of these rules.

- 13.8 The board, upon completion of the investigation of a written student complaint, will supply the school by certified mail with a written report of the findings and any proposed corrective action. The school will have twenty (20) work days to reply to the board before any action may be taken.
- 13.9 The school has a right to request a hearing regarding any findings or action proposed by the board resulting from an investigation involving student complaints.
- 13.10 The board may forward any information pertaining to a written complaint found to have merit involving student financial aid to the United States Department of Education.

SECTION 14. — WARNING, SUSPENSION, WITHDRAWAL, or REVOCATION of ACCREDITATION, LICENSE, and/or APPROVAL to OPERATE

- 14.1 A school shall provide the board with a copy of any notice of warning, suspension, revocation, or other adverse action received from any national, regional, or state accrediting and/or approval agency or the United States Department of Education within five (5) days of receipt of such notice. The school shall at the same time inform the board in writing of activities being taken to correct the deficiencies.
- 14.2 The board may for good cause, suspend, withdraw, or revoke the authorization of a school to operate within this state or to solicit students within the state. Good cause shall consist of:
- 14.2.1 Loss of accreditation by a nationally or regionally recognized accrediting agency;
 - 14.2.2 Cancellation of the school's bond by the bonding company and failure to secure a replacement in accordance with this rule;
 - 14.2.3 A final determination that the school has engaged in conduct prohibited by this rule, and the conduct warrants suspension, withdrawal, or revocation of the approval to operate a school or solicit students in this state, and corrective action has not been taken within the required time;
 - 14.2.4 Closure of the school without adequately providing for the completion of students' classes or course work, without refunding

students' unearned tuition or otherwise discharged the institutions contractual obligations to the students;

14.2.5 Conviction of the owner of a school for a felony or crime involving administration of the school or involving Federal Student Assistance programs; or

14.2.6 Refusal to cooperate with an investigation pursuant to Section 13 of this rule.

14.3 Upon receipt by the board of information constituting any of the above grounds for suspension, withdrawal, revocation, or other adverse action, the board may notify the school and its owner in writing of its intent to recommend suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.

14.3.1 The owner of the school may, within ten (10) work days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) work days of such request at the chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the chancellor.

14.3.2 The hearing shall be conducted by the Chancellor of the State College System or the chancellor's designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.

14.3.3 The chancellor or the chancellor's designee may continue the hearing at the request of the school for good cause shown. Continuances shall not be granted as a matter of right.

14.3.4 If the owner or a representative of the school does not request a hearing within the requisite time period, the recommendation of the chancellor shall be deemed unchallenged by the school and reported to the board for final action.

14.4 At the hearing, the grounds for suspension, withdrawal, or revocation of authorization to operate the school or other adverse action must be established by clear and convincing evidence.

14.4.1 The owner of the school or its designated representative may appear to defend the interests of the school, may present witnesses and evidence on behalf of the school, and may cross-

examine witnesses against the school. The school may retain legal counsel to represent its interests at the hearing.

- 14.4.2 The board does not have the power to issue subpoenas, but the chancellor or the school may request the appearance of witnesses at the hearing, who shall be notified of such request by the chancellor or the chancellor's designee with the date, time, and location of the hearing in writing.
- 14.4.3 The rules of evidence shall not strictly apply, and evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidence offered by either party shall be ruled upon by the chancellor or the chancellor's designee who conducts the hearing.
- 14.4.4 The hearing shall be recorded by mechanical means or by a certified court reporter retained by the Chancellor.
- 14.5 The chancellor shall make written findings of fact and conclusions of law as to whether or not the school or its representative has committed acts in violation of the law or these rules which would justify the suspension, withdrawal, or revocation of its authorization to operate. Such findings and conclusions shall be reported to the board, and a copy of same shall be provided to the school on the same date it is filed with the board and placed upon its agenda for action.
- 14.6 The board shall act upon the report at its next regularly scheduled business meeting to accept or reject the findings of the chancellor or the chancellor's designee, and to suspend, withdraw, or revoke the authority of the school or its representative to operate and/or solicit students within this state. Notification of the board's action shall be given to the school and/or its representative in writing within two (2) business days following such action of the board, by certified mail, or by personal delivery. For good cause shown in the minutes of the board, action upon the chancellor's report may be deferred to a date not later than the next regularly scheduled business meeting of the board.
- 14.7 A school or its representative may appeal an adverse action of the board to a court of competent jurisdiction within the time period specified by state law.

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BOARD OF DIRECTORS
SERIES 3**

**TITLE: ~~PROPRIETARY~~ CORRESPONDENCE, BUSINESS,
OCCUPATIONAL, and TRADE SCHOOLS**

SECTION:	PAGE
1 General	1
2 Definitions	1
3 Exemptions	3
4 Application for Permit	4
5 Permit Application Fee	6
6 Surety Bond Requirements	7
7 Maintenance of Records	8
8 Change of School Ownership	9
9 School Closing	10
10 Student Enrollment Contract	11
11 Cancellation and Refund Policies	12
12 Advertising	14
13 Student Complaints	16
14 Warning, Suspension, Withdrawal or Revocation of Accreditation, License, and/or Approval to Operate	17

**TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 3**

TITLE: ~~PROPRIETARY~~ **CORRESPONDENCE, BUSINESS,
OCCUPATIONAL, and TRADE SCHOOLS**

SECTION 1. GENERAL

- 1.1 Scope - Rule regarding the issuance, renewal, and revocation of permits to ~~proprietary~~ correspondence, business, occupational, and trade schools.
- 1.2 Authority - West Virginia Code § 18B-3-5
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. DEFINITIONS

- 2.1 Accredited School A school that is accredited by a regional or national accrediting agency that is ~~approved~~ **recognized** by the United States Department of Education.
- 2.2 Associate Degree A degree ~~authorized by the State College System Board of Directors~~ that may be awarded by accredited proprietary schools pursuant to a program of not less than two (2) academic years as **authorized by WV Code 18B-3-5.**
- 2.3 Board The Board of Directors of the State College System of West Virginia.
- 2.4 Campus A permanent facility where instruction takes place, or a facility where courses are taught for more than ten (10) days per calendar year.

- 2.5 Chancellor The Chancellor of the Board of Directors of the State College System of West Virginia or his or her designee.
- 2.6 Correspondence School An ~~for-profit~~ educational organization which, for a consideration, profit, or tuition, teaches or instructs in any subject that prepares an individual for employment solely through the medium of correspondence between the student and the school, and by which the school transmits to or exchanges matter with the student via printed material, video tapes, cassette tapes, telecommunications, or other means.
- 2.7 Financially Sound **Meeting two of the following:** a current ratio of at least 1:1 regarding total current assets compared to total current liabilities, positive total equity, ~~and~~ or current year profitability.
- 2.8 Immediate Family Spouse, parent, sibling, child, or grandchild.
- 2.9 Ownership Change When the change of ownership results in a change in control of the school outside the immediate family. ~~The sale or transfer of ownership interest to a current stockholder of the corporation as a result of the death of an owner is not considered a change in ownership for the purposes of this rule.~~
- 2.10 Person Any individual, group of individuals, partnership, association, organization, business, trust, corporation, or other business entity.
- 2.11 ~~Proprietary~~ Business, Occupational, or Trade School An ~~for-profit~~ institution, ~~or~~ organization **or entity** no matter how titled, maintaining or conducting classes **or instruction** for a consideration, remuneration, or tuition, designed to prepare an individual for employment.
- 2.12 Representative Any person ~~employed by~~ representing a school, whether such school is located within or outside of the State of West Virginia, ~~to~~ acting as an agent, solicitor, procurer, broker, or independent contractor to produce students or enrollees for

any such school by solicitation in any form at any place in ~~the~~ **this State of West Virginia.**

- 2.13 School **Business, occupational, trade or correspondence school.**
- 2.14 Specialized Associate Degree ~~authorized by the State College System Board of Directors~~ that may be awarded by proprietary schools pursuant to a degree program of not less than two (2) academic years.
- 2.15 State The State of West Virginia.
- 2.16 Terms Regularly established divisions of the academic school year, each with an established starting and ending date, which are normally referred to as modules, quarters, trimesters, or semesters.

SECTION 3. EXEMPTIONS

- 3.1 For the purpose of this rule, the following are not defined as a correspondence, business, occupational, or trade school:
- 3.1.1 Any school or ~~organization~~ **person** that is licensed or approved for ~~a permit~~ to offer education or training ~~from~~ **by** any other statutory licensing or accrediting agency pursuant to statutes of the West Virginia Code other than 18B-3-5.
- 3.1.2 Any school **or organization** whose courses of instruction offered are solely for the purpose of teaching preparation of tax returns.
- 3.1.3 Any school conducted by any person, ~~firm, corporation, or other organization~~ solely on a contractual basis **with private or governmental organizations** where obtaining a permit is not a condition of the contract and ~~no individual person is~~ **students are not charged tuition or other fees**, and no advertisement of courses takes place.
- 3.1.4 Any ~~corporate~~ training or apprenticeship program conducted by a company, union, or other organization having students **or employees** enrolled in training or educational programs for which ~~tuition and/or fees~~ **students or employees are not charged tuition or other fees.**

- 3.1.5 Schools that offer courses which are conducted solely for personal development or information, ~~and~~ do not **prepare, or represent themselves as preparing, an individual for a career or occupation, enhancing employment opportunities, are not offering sequential courses comprising an entire program and are not offering courses for more than twenty-four (24) weeks per calendar year.**
- 3.1.6 Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in public or private schools.
- ~~3.1.7 Those schools or organizations which offer instruction or training on a contractual basis with private or governmental organizations and/or have students enrolled in courses or programs of instruction for which they are not charged tuition and/or fees.~~
- 3.1.7 Non-profit independent colleges or universities that are accredited by a regional accrediting agency recognized by the United States Department of Education.
- 3.1.8 ~~These~~ Public colleges, universities, and schools under the jurisdiction of the State College System of West Virginia, the University System of West Virginia, or the West Virginia Board of Education.

SECTION 4. APPLICATION for PERMIT

- 4.1 Unless exempted as defined in Section 3 of this rule, no person or corporation shall solicit students or operate any correspondence, business, occupational, trade school, or branch campus in the state without first applying for or obtaining a permit ~~to do so~~ issued by the board. A permit shall be issued authorizing the solicitation of students **and/or** authorizing the operation of a school if all conditions of the laws and regulations of ~~the~~ **this** State pertaining to correspondence, business, occupational, and trade schools are met.
- 4.2 If a person ~~or corporation~~, as defined in Section 2 of this rule, wishes to operate or continue to operate a school or branch campus or to solicit students in the state, that person ~~or corporation~~ shall submit an original

application for a permit to do so on forms provided by the Chancellor board.

4.3 As a condition of the issuance of a permit, a school shall submit with the application:

4.3.1 A copy of the curriculum and description of courses for each program being offered;

4.3.2 A copy of the student enrollment contract;

4.3.3 A copy of the school's tuition refund policy and schedule;

4.3.4 A fully executed surety bond in the appropriate amount;

4.3.5 The appropriate permit fee;

4.3.6 A list of all official representatives of the school who will be soliciting students;

~~4.3.7 A written plan designed to ensure the right of the students to complete the course of instruction in which the student is enrolled, in the event the school desires to close or change location; and~~

4.3.7 If accredited, the letter of accreditation status documentation from the accrediting agency regarding accreditation status.

~~4.4 In addition, as a condition of the issuance of a permit for all new applicants, a representative of the board will make an on-site visit to the school location to confirm its readiness for operation by determining:~~

~~4.4.1 That adequate facilities are available and ready for occupancy.~~

~~4.4.2 That all instructional equipment, books, supplies and personnel are in place and ready for operation.~~

4.4 Any person or organization submitting an initial application for a permit to operate a school in this state shall provide **Persons shall not be deemed to have submitted an initial application for a permit to operate a school in this state unless a properly completed application, the application fee, the required surety bond, and all other information and documentation required by this rule has been submitted to the board and the following has been provided:**

- 4.4.1 A listing of the individual's or organization's prior school operation history in this state, ~~or~~ other states **or other countries.**
- 4.4.2- Information detailing the involvement in **or relationship to** any school that lost its accreditation, lost its authorization to operate because of violation of state or federal laws, was terminated from participation in the federal financial aid programs, ~~or~~ closed without arranging a teach-out for students or arranging refunds **or other discharge of the school's contractual obligation to the student.**
- 4.4.3 Proof at the time of filing an **initial** application that adequate facilities are available and ready for occupancy and that all instructional equipment, books, supplies, and personnel are in place and ready for operation and verified by an on-site ~~committee~~ **visit by a representative of the board.**
- 4.5 As a condition of permit renewal, all schools shall make annual reports to the ~~Chancellor~~ **board** on forms furnished by the ~~Chancellor~~ **board.**
- 4.6 In addition to the requirements set forth above, all out-of-state schools shall annually provide evidence of authority to operate or accreditation by the regulatory agency of each state in which the school is located or conducts business.
- 4.7 A permit shall be valid for one year corresponding to the effective date of the surety bond as required herein.
- 4.8 Any information of a confidential or proprietary nature provided to the board by a school for the purpose of obtaining or renewing a permit, and exempted from public disclosure pursuant to the terms of West Virginia Code § 29B-1-4, shall not be disclosed for any purposes inconsistent with this rule or statute.

SECTION 5. PERMIT APPLICATION FEE

- 5.1 Any person ~~or corporation~~ applying for a permit to solicit students or operate a ~~for-profit~~ school, **as defined by this rule**, or branch campus in the state shall submit an initial application fee in the amount of two thousand dollars (\$2,000) with the application.

- 5.2 Any person ~~or corporation~~ applying for renewal of a permit shall submit an annual fee of five hundred dollars (\$500) with the renewal application for each campus operated by the school.
- 5.3 Any person ~~or corporation~~ not submitting a permit renewal application and surety bond ~~within sixty (60) days of the effective date of the surety bond~~ shall be subject to the regulations pertaining to an initial application **more than sixty-days after the last effective date of the applicant's previous surety bond shall be considered a new applicant, and shall pay the initial application fee.**

SECTION 6. SURETY BOND REQUIREMENTS

- 6.1 A school located in the state shall submit with its initial or renewal application, the original fully executed, continuous surety bond written by a company authorized to do business in ~~the~~ **this** State in the sum of fifty thousand dollars (\$50,000) **unless required otherwise by a provision of this section.**
- 6.2 ~~However,~~ Any school which has its physical facilities located in the state and has operated in ~~the~~ **this** State under the present ownership, or ownership **control** within the immediate family, for at least ten (10) years, as of June 10, 1994, is required to submit with its renewal application the original copy of a fully executed continuous surety bond written by a company authorized to do business in ~~the~~ **this** State in the sum of thirty-five thousand dollars (\$35,000).
- 6.3 Schools having branch campuses within ~~the~~ **this** State shall provide one fully executed surety bond in the appropriate amount providing coverage for all campuses.
- 6.4 In the event of notice of cancellation of the surety bond by a bonding company, the school shall furnish a fully executed replacement to the ~~Chancellor board~~ within sixty (60) days of the school's receipt of the notice of cancellation. But in no event may a school solicit or enroll new students until the appropriate surety bond is in effect.
- 6.5 The termination of a school's surety bond coverage shall be grounds for revocation of its permit if the school fails to replace the bond within the required time.

- 6.6 A school whose physical facilities are located outside ~~the~~ **this** State, and which applies for a permit to solicit students in ~~the~~ **this** State, shall submit a fully executed surety bond in the sum of fifty thousand dollars (\$50,000).
- 6.7 ~~Any school that has its accreditation terminated for cause, or if the school's institutional eligibility under the Higher Education Act of 1965, as amended, is terminated for cause, the board after reviewing documentation as to the above, may increase the bond requirement to one hundred fifty thousand dollars (\$150,000). The board may increase the bond requirement of any school to one hundred fifty thousand dollars (\$150,000) if the school has its accreditation terminated or its eligibility under the Higher Education Act of 1965, as amended, is terminated for cause.~~
- 6.8 ~~If in the board's discretion a school's continued financial viability as an ongoing concern is in doubt, the board may require that audited financial statements, in accordance with the standards of the American Institute of Certified Public Accountants, be submitted for review. If the school is found not to be financially sound, as defined in Section 2 of this rule, the board may require a surety bond in an amount necessary to protect the financial obligation legally due enrolled students, but may not exceed more than four hundred thousand dollars (\$400,000). If, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the school is not financially sound, as defined in section 2 of this rule, the board may require the surety bond be increased up to an amount not to exceed four hundred thousand dollars (\$400,000) if the board determines an increased bond is reasonably necessary to protect the financial obligations legally due to the students then enrolled at the institution.~~
- 6.9 Confidentiality Statement - any financial information submitted to the ~~Chancellor board~~ **board** by a ~~proprietary institution~~ **school** covered under this rule shall be used **by the board** only for purposes of this rule.

SECTION 7. MAINTENANCE of RECORDS

- 7.1 A school shall ~~store~~ **maintain** records at a central location and have them available for inspection by a representative of the board.

- 7.2 A school shall maintain academic records suitable for transcript purposes for ~~all~~ **each** students for fifty (50) calendar years after the student has departed ~~from~~ the school, or ~~who~~ **until the student** becomes 65 years of age. ~~and include as the minimum:~~ **The records shall include, as a minimum:**
- 7.2.1 The name and address of the school;
 - 7.2.2 The full name and address of the student;
 - 7.2.3 ~~The dates of attendance;~~ **The starting and completion or separation dates;**
 - 7.2.4 The course of instruction or subject;
 - 7.2.5 The amount of credit, if any;
 - 7.2.6 The grade for each subject; and
 - 7.2.7 ~~A statement of graduation or completion~~ **indicating whether the student graduated or completed the course.**
- 7.3 A school shall develop and enforce security measures to protect student records from damage or destruction for the required period of time.

SECTION 8. CHANGE of SCHOOL OWNERSHIP

- 8.1 A school must notify the ~~Chancellor~~ board at least thirty (30) days in advance of the change of ownership ~~or~~ control. Within thirty (30) days of such notification, the ~~Chancellor~~ board will notify the school of permit status.
- 8.2 When a school is located in ~~the~~ **this** State and has a change of ownership **control**, and ~~if~~ the new ownership **control** is outside of the immediate family of the previous owner, the school may continue to operate under the present permit. However, **before the solicitation of students can continue**, the school shall submit to the ~~Chancellor~~ board the following:
- 8.2.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000).

- 8.2.2 The names, addresses and corporate titles of all persons or other entities having a financial interest in the school, and the name and addresses of any other schools in which these persons or entities have or have had a financial interest.
 - 8.2.3 A revised listing of all programs to be offered if changes were made with new ownership; and
 - 8.2.4 An application for each representative of the school who will be soliciting students.
- 8.3 If the school is located outside ~~the~~ **this** State, the school must show evidence of compliance with the laws and regulations in the state where the school is located. In addition, **before the solicitation of students continues in this State**, the school must submit the following:
- 8.3.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000);
 - 8.3.2 An application for each representative of the school that will be soliciting students in West Virginia;
 - 8.3.3 A revised listing of all programs to be offered if changes are made with new ownership; and
 - 8.3.4 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school.

SECTION 9. SCHOOL CLOSING

- 9.1 A school which is closing, either voluntarily or involuntarily, shall:
 - 9.1.1 Inform the ~~Chancellor board~~ of this action immediately by certified mail;
 - 9.1.2 Supply the ~~Chancellor board~~ with the name, address, and telephone number of the person responsible for closing arrangements;
 - 9.1.3 Supply the ~~Chancellor board~~ with the name, address, telephone number, and the course of study for each student who has not completed his or her course of study;

- 9.1.4 Supply the ~~Chancellor board~~ with information on the **dates of enrollment**, the amount of class time left for each student to complete the course, ~~along with~~ **and** the amount of entitled refund, if any, for which each student is eligible; ~~if the school fails to deliver the instruction for which the student had contracted;~~
- 9.1.5 Inform currently enrolled students by written notice of the **appropriate** procedures they are to follow to secure refunds **due if suitable teachouts have not been arranged**, or to continue their education and supply the ~~Chancellor board~~ with a copy of this notice; and
- 9.1.6 Inform the ~~Chancellor board~~ **and currently enrolled students** of plans to store the permanent student records and the procedure to obtain copies.

SECTION 10. STUDENT ENROLLMENT CONTRACT

- 10.1 ~~Each school shall utilize a written~~ **Before the schooling begins, all students shall receive a completed, signed and dated enrollment contract** ~~which~~ specifying both the school's and student's legal rights and obligations. The agreement may incorporate into the contract by reference information in the school's catalog, student handbook, or other school publication without printing such information or publication in the contract itself. The enrollment contract must contain, but is not limited to, the following:
- 10.1.1 The name and address of the school;
- 10.1.2 The name of the course of study or program, including the number of credit or clock hours of classroom instruction, home study lessons, or other study units required;
- 10.1.3 The total cost of the course, **term** or program for which the student is obligated under the contract, including tuition, fees, books, and any other charges the student will incur shall be clearly stated;
- 10.1.4 The school's cancellation and refund policy, including an explanation of the procedures a student will follow to cancel the contract or enrollment agreement; and

- 10.1.5 The signature of the student applicant, a parent or other sponsor if the student is under the age of eighteen (18), and the appropriate school officials, plus the date signed.
- 10.2 An application for admission is not to be construed as binding on the student, therefore limiting total student financial obligation to the payment of an application fee.
- 10.3 The school shall provide the student with a copy of the completed enrollment agreement that is signed and dated.
- ~~10.4 Notwithstanding the above requirements, the enrollment agreement of a school shall be deemed to meet all requirements if:~~
- ~~10.4.1 The school's physical facilities are located within the state;~~
- ~~10.4.2 The school has been under permit since July 1, 1979, under continuous ownership within the same immediate family; and~~
- ~~10.4.3 The school is accredited by an appropriate nationally recognized accrediting agency approved by the United States Department of Education.~~
- 10.4 Those schools that are accredited by an appropriate accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria pertaining to the student enrollment contract to satisfy the requirements of this section. However, in the event that enrollment contracts are not addressed by accrediting agency criteria, the provisions of this section must be followed.**

SECTION 11. CANCELLATION and REFUND POLICIES

- 11.1 To obtain a permit, a school shall have a cancellation and refund policy that incorporates the following provisions:
- 11.1.1 ~~A statement refund policy~~ relative to the unused portion of tuition, fees, and other charges if the student does not ~~enroll in the school~~ **begin classes**, withdraws, or is dismissed.
- 11.1.2 All fees and payments remitted to a school by a prospective student shall be refunded, minus any stated application fee not to exceed fifty dollars (\$50), if the student is not admitted due to ineligibility.

- 11.1.3 An admitted student applicant may cancel, by written notice, his or her enrollment any time prior to the first class day of the session for which the application was made, and the school shall refund all tuition paid by the student minus an application fee not to exceed fifty dollars (\$50.)
- 11.1.4 For the purposes of refund calculations, an individual's status as a student shall be considered terminated by the school not later than seven (7) calendar days after the last day on which the student actually attended the school. Termination may be effected earlier by proper notification. A home study program of instruction shall be terminated if a school does not receive a lesson or an appropriate response from the student within six months after receipt of the last lesson, and the date of withdrawal shall be the date of the last lesson received. The date of withdrawal initiated by a student shall be the date a letter is postmarked or proper notification is given. The school shall provide a receipt for each ~~the~~ letter or withdrawal notice received.
- 11.1.5 Schools are required to submit refunds to individuals or the appropriate agency within ~~thirty (30)~~ **twenty (20)** days after receipt of a proper notification of termination from a student.
- 11.1.6 The student refund policy for withdrawals and terminations for schools not accredited by an ~~national~~ accrediting agency recognized by the United States Department of Education must at a minimum comply with the following:
- 11.1.6.1 A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges less the application fee.
- 11.1.6.2 A student who begins a term and withdraws after completing more than ten percent (10%) through twenty-five percent (25%) of the term is entitled to a refund of seventy-five percent (75%) of the charges less the application fee.
- 11.1.6.3 A student who withdraws after completing more than twenty-five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges less the application fee.

- 11.1.6.4 A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund.
- 11.2 Refunds shall be calculated for a specific term as defined in Section 2 of this rule, ~~not~~ or the total cost of the programs ~~except in those programs that are of sixteen (16) weeks or less in duration not exceeding one year.~~ **In the event that students are financially obligated for a year-long program, the refund policy shall be on a weekly prorata basis through the first sixty percent (60%) of the program.** The student's financial commitment shall not be for more than one ~~term~~ year at any given time.
- 11.3 Those schools that are accredited by an appropriate ~~nationally-recognized~~ accrediting agency ~~approved~~ recognized by the United States Department of Education, may use the accrediting agency's refund policy to meet the requirements of this section.
- 11.4 Those schools having their physical facilities located outside ~~West Virginia~~ **this State** must comply with the cancellation and refund policies of their home state. If there is no state cancellation and refund policy in their home state, Section 11 of this policy must be followed.

SECTION 12. ADVERTISING

- 12.1 Each school and its representatives shall not make or cause to be made any oral, written, or visual presentation in connection with the offering or publicizing of a subject or course of instruction which is false or misleading.
- 12.2 In its advertising, a school shall:
- 12.2.1 Limit reference to its authority to operate to "Permit to Operate Issued by the Board of Directors of the State College System of West Virginia";
- 12.2.2 Disclose that it is a home study school if it provides such instruction;
- 12.2.3 Advertise starting or average salaries of its former students only if these claims can be documented for the most recent twelve-(12) month period preceding the advertisement **for more than fifty percent (50%) of the graduating class.**

- 12.3 In its advertising, a school shall not:
- 12.3.1 Advertise that it is "supervised," "recommended," "endorsed," "approved," or "accredited" by the board;
 - 12.3.2 Describe its courses of instruction and subjects in a misleading manner.
 - 12.3.3 Use photographs or other illustrations in ways which misrepresent the size and location of the school, its equipment, and facilities for the career for which the student is being trained;
 - 12.3.4 Represent that it is endorsed by or affiliated with a college or university, unless such statements can be documented;
 - 12.3.5 Advertise the transferability, **or possibility of transferability**, of its credits to specific colleges and universities unless it has written evidence on file of current acceptability of such credits from said colleges or universities;
 - 12.3.6 ~~Falsely~~ Advertise that it is endorsed by manufacturers, business establishments, or organizations engaged in the line of work for which the school gives training **unless written documentation regarding the endorsement is on file**;
 - 12.3.7 Advertise accredited status unless such status has been received from an accrediting body currently listed as recognized by the United States Department of Education and such accrediting body must be named if used in any advertisement or promotional material;
 - 12.3.8 Advertise as an employment agency, or under the same or similar name as such an agency, or advertise training courses in the "Help Wanted" section of any newspaper;
 - 12.3.9 Advertise any tuition, fees, or other charges in amounts other than those currently on file in the chancellor's office or advertise them without showing the total costs;
 - 12.3.10 Falsely ~~imply~~ a guarantee of job placement or employment at a certain wage; or

- 12.3.11 Use endorsements, commendations, or recommendations by students without their written consent.
- 12.4 A school eligible to offer a course of instruction or program leading to an associate degree or specialized associate degree shall, in any advertisement, promotional material, or the school catalogue refer to this degree designation as an "Associate Degree" or a "Specialized Associate Degree."
- 12.5 Those schools that are accredited by an appropriate ~~nationally recognized~~ accrediting agency ~~approved~~ **recognized** by the United States Department of Education may adhere to the accrediting agency's criteria pertaining to advertising to satisfy the requirements of this section. However, in the event that a ~~particular area of this section~~ **advertising** is not addressed by accrediting agency criteria, the provisions of this section must be followed.

SECTION 13. STUDENT COMPLAINTS

- 13.1 A school shall **attempt to** resolve student complaints promptly and fairly and shall not subject a student to punitive action as a result of a written complaint having been filed with the school or ~~Chancellor~~ board.
- 13.2 The school shall have written procedures that describe in detail how a student may register a complaint **with the school and board**, and how the school will investigate and attempt to resolve the complaint.
- 13.3 **The board will begin the investigation of a written complaint within thirty (30) days of the date of receipt of the complaint unless it is a complaint regarding a matter over which the board has no jurisdiction or it is intrinsically not credible. The initial investigation should be completed within sixty (60) days of the filing of the complaint.**
- 13.4 The school shall provide all enrolled students with a written copy of the student complaint procedures and make prospective students aware that such procedures exist and provide copies upon request.
- 13.5 Each school that is being investigated, as a result of a written student complaint, will be notified by the ~~Chancellor~~ board that such an investigation is being conducted and ~~shall be informed of the nature of the complaint~~ **a copy of the written complaint will be forwarded to the school. The name of the complainant may be withheld if so requested.**

- 14.2.2 Cancellation of the school's bond by the bonding company and failure to secure a replacement in accordance with this rule;
 - 14.2.3 Proof that the school has engaged in conduct prohibited by this rule and has failed to take corrective action within the required time;
 - ~~14.2.4 Proof of general inadequacy of the instruction offered by the school, resulting in the inability of a substantial number of enrollees to obtain or retain employment because of such inadequate training;~~
 - 14.2.4 Closure of the school without adequately providing for the completion of students' classes or course work, ~~or~~ without refunding students' unearned tuition **or otherwise discharged the institutions contractual obligations to the students.**
 - 14.2.5 Conviction of the owner of a school for a felony ~~involving moral turpitude~~ or crime involving administration of the school or involving Federal Student Assistance programs; or
 - 14.2.6 Refusal to cooperate with an investigation pursuant to Section 13 of this rule.
- 14.3 Upon receipt by the ~~Chancellor~~ **board** of information constituting any of the above grounds for suspension, withdrawal, revocation, or other adverse action, the ~~Chancellor~~ **board** may notify the school and its owner in writing of ~~his/her~~ **its** intent to recommend suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.
- 14.3.1 The owner of the school may, within ten (10) **work** days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) work days of such request at the chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the chancellor.
 - 14.3.2 The hearing shall be conducted by the Chancellor of the State College System or the chancellor's designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.

- 14.3.3 The chancellor or the chancellor's designee may continue the hearing at the request of the school for good cause shown. Continuances shall not be granted as a matter of right.
- 14.3.4 If the owner or a representative of the school does not request a hearing within the requisite time period, the recommendation of the chancellor shall be deemed unchallenged by the school and reported to the board for final action.
- 14.4 At the hearing, the grounds for suspension, withdrawal, or revocation of authorization to operate the school or other adverse action must be established by clear and convincing evidence.
- 14.4.1 The owner of the school or its ~~manager~~ or designated representative may appear to defend the interests of the school, may present witnesses and evidence on behalf of the school, and may cross-examine witnesses against the school. The school may retain legal counsel to represent its interests at the hearing.
- 14.4.2 The board does not have the power to issue subpoenas, but the chancellor or the school may request the appearance of witnesses at the hearing, who shall be notified of such request by the chancellor or the chancellor's designee with the date, time, and location of the hearing in writing.
- 14.4.3 The rules of evidence shall not strictly apply and evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidence offered by either party shall be ruled upon by the chancellor or the chancellor's designee who conducts the hearing.
- 14.4.4 The hearing shall be recorded by mechanical means or by a certified court reporter retained by the Chancellor.
- 14.5 The chancellor shall make written findings of fact and conclusions of law as to whether or not the school or its representative has committed acts in violation of the law or these rules which would justify the suspension, withdrawal, or revocation of its authorization to operate. Such findings and conclusions shall be reported to the board, and a copy of same shall be provided to the school on the same date it is filed with the board and placed upon its agenda for action.

- 14.6 The board shall act upon the report at its next regularly scheduled business meeting to accept or reject the findings of the chancellor or the chancellor's designee, and to suspend, withdraw, or revoke the authority of the school or its representative to operate and/or solicit students within ~~the~~ this State. Notification of the board's action shall be given to the school and/or its representative in writing within two (2) business days following such action of the board, by certified mail or by personal delivery. For good cause shown in the minutes of the board, action upon the chancellor's report may be deferred to a date not later than the next regularly scheduled business meeting of the board.
- 14.7 A school or its representative may appeal an adverse action of the board to a court of competent jurisdiction within the time period specified by state law.

**COMMENTS RECEIVED ON SERIES 3
ARE INCLUDED ON THE FOLLOWING PAGES**

VALLEY TRAINING CENTERS
INCORPORATED

Gary D. Bettcher
President

August 5, 1994

Mr. James L. Skidmore
Assistant Director of Community
Colleges and Vocational Education
1018 Kanawha Boulevard East
Suite 700
Charleston, WV 25301

Dear Mr. Skidmore:

Thank you for the opportunity to comment on the proposed regulations regarding Proprietary Business Schools - Title 131.

Section 4.3.7. A written plan designed to ensure the right of the students to complete the course of instruction in which the student is enrolled, in the event the school desires to close or change location;

This provision was part of the original U.S. Department of Education (ED) regulation. However in the April 11th Federal Register (see attachment), ED rescinded this regulation because they felt there was adequate scrutinizing of the financial stability without the provision. Many schools, accrediting agencies and state agencies strongly opposed this regulation because there was no way to provide an adequate plan without the states or accrediting agencies establishing a fund, or for the school to establish a reciprocal agreement with another school. ED consulted with the community and decided to rescind the regulation.

The increased bonding requirements found in sections 6.7 and 6.8 would provide adequate protection to the student. We trust the State College System Board will find this section equally problematic.

Section 11.1.4. The first sentence in this section is somewhat confusing. Does this mean that if a student stops attending class, they must be terminated within seven calendar days or does it mean that once terminated, the school can charge the student for up to seven calendar days beyond their last day of attendance?

Neither option seems appropriate. A school may need longer than seven days to track down a student who has had an emergency situation. Premature termination of a student may result in serious financial aid implications for that student.

The second interpretation does not seem appropriate either. Refund calculations, it would seem, should be based on the student's last day of attendance, not seven days later. We suggest clarification.

Do the last two sentences refer only to home study students or all students? What type of receipt is required? Is a refund worksheet adequate? Also, what is meant by "each letter"? Does this mean any correspondence from the student? What is required if the withdrawal is verbal? We recommend this sentence be struck.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary D. Bettcher".

Gary D. Bettcher

GDB:bab

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AC07

Federal Family Education Loan Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan Program, formerly the Guaranteed Student Loan (GSL) program. The final regulations are needed to delete a provision of the regulations regarding the school closure requirement for certain private schools.

EFFECTIVE DATE: These regulations take effect July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe, Acting Chief, FFEL Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, room 4310, ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-5449. Telephone (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment is needed to delete from the regulations the school closure plan requirement for certain private schools.

On January 7, 1993, the Secretary issued final regulations amending 34 CFR 682.600 to require private schools that do not qualify as an "institution of higher education" under 34 CFR 600.4 and offer an undergraduate nonbaccalaureate program designed to prepare students for a particular vocation, trade or career field as a requirement for participation in the FFEL Program to have a school closure plan in place within six months of the effective date of April 13, 1993. The regulations were intended to address a serious problem that occurs whenever a school closes precipitously, leaving its students unable to complete their programs of study, usually without any provision for teaching out the affected students.

The issue was initially addressed in a notice of proposed rulemaking (NPRM) published on June 5, 1989 (54 FR 24124). The NPRM proposed that a school would be required to have a teachout agreement with another participating school under which the second school would agree to teach the

closing school's students. This requirement would have applied to all schools offering a program of study designed to prepare students for a particular vocation, trade or career. The public comments strongly opposed the "teachout" requirement and pointed out that, in many circumstances, a teachout was not possible due to the location of the school or the highly specialized nature of the course work. Many commenters also identified alternatives to a teachout arrangement. The Secretary decided, after extensive consultation with the community, not to pursue a final regulation based on this NPRM.

On September 5, 1991 (56 FR 43978), the Secretary published a second NPRM that would require schools to maintain a school closure plan but would expand the options available to satisfy this requirement. While this regulatory proposal also generated a considerable amount of negative comment, the Secretary believed at that time that the need to protect the interests of students outweighed the possible negative impact of the regulations on affected schools. The final regulation was published on January 7, 1993 (58 FR 3174).

Since publication of the final regulations, the Department has received many objections to the regulatory requirement of a school closure plan that were not raised during the public comment period. In addition, the Department has been evaluating the necessity of these regulations in light of other actions it is implementing or has initiated to address the problems created by school closures. For example, the Higher Education Amendments of 1992, Public Law 102-325, amended the Higher Education Act (HEA) to strengthen ED's oversight of institutions, including more frequent monitoring of the financial stability of schools. In those cases where there is a risk of precipitous closure, ED is already requiring surety arrangements to cover potential losses to students and taxpayers. Public Law 102-325 also provides for cancellation of a borrower's obligation on a FFEL Program loan if the borrower is unable to complete his or her program of study because the institution closed. In light of additional information provided to the Department and these legislative developments, the Secretary has decided to withdraw 34 CFR 682.600(d).

In the Paperwork Reduction Act of 1980 section of the NPRM that was published for this regulation in the September 5, 1991 Federal Register, the Department indicated that there was an

under § 682.600(d). The Department estimated the annual public reporting burden for this collection of information to be an average of one hour per response for 638 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Based on an average salary of \$5.00 an hour for a staff person at a school covered by this requirement, it would cost each covered school \$5.00 to comply with this provision. This was not an annual cost for each school. Based on this estimate, deletion of this regulatory requirement would save the covered schools each one hour of work at \$5.00 per hour.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since publication of the final regulations in 34 CFR 682.600(d) in the January 7, 1993 Federal Register, the Secretary has received a substantial number of comments concerning the implementation of the regulatory requirement for school closure plans. As discussed above, significant cause has been shown to revoke § 682.600(d) as an inappropriate burden on the program community. However, under section 482(c) of the Higher Education Act, such revocation may take effect on July 1, 1994 only if published in final form by May 1, 1994; otherwise the revocation will not take effect until July 1995. Therefore, to avoid the delay that would be occasioned by publication of a proposed rule, the Secretary has determined that publication of a proposed rule is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12860

These final regulations have been reviewed in accordance with Executive Order 12860. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practices and procedures, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: March 18, 1994.

Richard W. Riley,
Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

§ 682.600 [Amended]

2. Section 682.600 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

[FR Doc. 94-8523 Filed 4-8-94; 8:45 am]

BILLING CODE 4000-01-P

- * Acceptable documentation for "other evidence" that the student is registered with Selective Service would be the institution's documented statement based on a telephone call with an employee of Selective Service.
- * Included in the preamble to these regulations is the statement that students who are incarcerated at the beginning of a payment period but are released prior to the end of the payment period would be eligible for Title IV loans if:
 - 1) the loan funds are disbursed after the student is released
 - 2) the student continues to meet other Title IV eligibility requirements

ED ELIMINATES SCHOOL CLOSURE PLAN REQUIREMENT

In the Federal Register of April 11th ED rescinded the regulation which required certain private schools to have a school closure plan in place as required by the final regulation published January 7, 1993. In recognition of the increased oversight required by the Higher Education Amendments of 1992 (including more frequent scrutiny of financial stability) and of the provision for cancellation of a borrower's obligation on an FFEL loan if the borrower could not complete a program due to school closure, ED is withdrawing the final regulation mandating school closure plans.

DEAR COLLEAGUE ADDRESSES PELL AUTHORIZATION ADJUSTMENTS

ED has issued Dear Colleague GEN-94-14 which provides guidance for institutions seeking Pell Grant authorization adjustments in accordance with the Higher Education Act of 1992. This legislation permitted institutions to receive credit or reimbursement for awards not previously recognized by ED if the awards are disclosed in a compliance audit. In order to obtain an adjustment, the institution must satisfy the following requirements:

- * The claim must be based on a finding included in the initial audit report for the institution.
- * The initial audit must be submitted within 10 days of the required deadline date, and if an extension was granted, it must be submitted by the expiration date of the extension.

In order to request Pell adjustments, institutions must follow the procedures contained in the enclosures to the Dear Colleague. The institution must have the required information (see enclosure in Dear Colleague) certified by their auditor and should send it certified mail to the Audit Resolution Branch of ED within 60 days after submission of the audit.

ED PUBLISHES NEW GUIDELINES REPLACING SEVEN MONTH RULE

ED has determined that the "7 consecutive month standard" will no longer be relevant to the determination of annual FFEL loan limit maximums. The following guidelines (or an ED approved alternative) will have to be in place by July 1, 1994. The following three definitions are critical to understanding the new requirements:

- 1) Academic Year (AY) - a period requiring at least 30 weeks of instructional time during which a full-time student is expected to complete at least 24 credit hours, 36 quarter hours or 900 clock hours.
- 2) Scheduled Academic Year (SAY) - the "fixed" academic period advertised in the institution's printed material which generally begins and ends at the same time each year according to an established schedule (also the academic period to which the minimum statutory definition of Academic Year in #1 must be applied).
- 3) Borrower-Based Academic Year (BBAY)* - a period of time which is individualized to each borrower and can vary based on the borrower's attendance and progress.

- * The BBAY may start at any time during the year depending on the borrower's start date, but if the BBAY does not correspond to the SAY, it must still meet the minimum academic year requirements or their equivalent. "Equivalent" for a BBAY is only applicable at a term-based institution and is determined in two steps:

STEP 1. Count the number of terms in the SAY which will represent the minimum number of terms to be included in the BBAY. A BBAY will then be composed of the same terms as a SAY or of one or more terms in the SAY plus at least one term outside the SAY.



Private Industry Council

Kanawha County

PRESIDENT

Bill Bevino

VICE PRESIDENT

Robert Strain

SECRETARY

Carolyn Smoot

TREASURER

Linda Petrella

DIRECTOR

Curtis Hardman

TO: Quetta Muzzle

FROM: Curtis Hardman *CH*

DATE: August 4, 1994

RE: Proposed Rule Regarding Proprietary Correspondence,
Business, Occupational and Trade Schools

Thank you for the opportunity to comment on the above referenced proposed rule. I have one question regarding the proposed rule and that deals with the exemptions.

Section 3 Exemptions at 3.1.7 states that "Those schools or organizations which offer instruction or training on a contractual basis with private or governmental organizations and/or have students enrolled in courses or programs of instruction for which they are not charged tuition and/or fees." (Are exempt from this rule.) My question is, "Are JTPA training/service providers included within this section as stated."

I personally feel the service providers should be exempted wherein all services they provide are JTPA related. Perhaps a clause could be inserted which specifically exempts JTPA funded service providers.

hiv

*Human Resource Development Foundation, Inc.
Human Resource Development and Employment, Inc.*

1644 Mileground
Morgantown, West Virginia 26505

Telephone: (304) 296-8223
Fax: (304) 296-8839
TDD: 1-800-982-8771

August 10, 1994

Mr. James L. Skidmore, Assistant Director
Community Colleges and Vocational Education
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

Dear Jim:

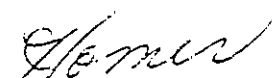
Thank you for the comment period to respond to the "Proposed Rule Regarding Proprietary Correspondence, Business, Occupational and Trade Schools."

My only suggestion is to include nonprofit organizations that receive similar accreditation as nonprofit independent colleges and universities in Rule 3.1.8; therefore, the word "organizations" would be inserted in Rule 3.1.8 to read:

Nonprofit independent colleges, universities, or organizations
that are accredited by a regional accrediting agency recognized
by the United States Department of Education.

Thanks again for granting commentaries on the regulations.

Sincerely,



Homer R. Kincaid
Director

HRK/cc
aft 4009, afl-cio

cc: Quetta Muzzle
Joe Powell



West Virginia Career College

FAX MEMO

TO: Jim Skidmore **DATE:** September 16, 1994
FROM: Michael Callen **RE:** Suggestions for
Legislative Rule Title
31 Series 3

Enclosed with this memo are two pages with suggested modifications. As indicated therein one additional suggested modification will follow for sections 10, 11, and 12; otherwise, the suggestions are fairly complete, except for the matters reviewed earlier and not incorporated with these suggestions.

M43

**SUGGESTIONS TO LEGISLATIVE RULE TITLE 31 SERIES THREE
PROPOSED JULY 1994**

1. Sections 2.2 and 2.13 - Associate Degree definitions - A degree, normally scheduled for completion in not less than two academic years, that is awarded by an accredited proprietary school or junior college as authorized by WV Code 18 B-3-5.
2. Section 6.8 - If, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the school is not financially sound (as defined in section 2 of this rule), the Board may require the surety bond to be increased up to amount not to exceed \$400,000 if the Board determines an increased bond is reasonably necessary to protect the financial obligations legally due to the students then enrolled at the institution.

NOTE: Even USDE now recognizes the current year profitability should not necessarily be a "bright line" test. I suggest that a financially sound definition be modified in some manner, perhaps requiring the school to meet two of the three requirements, or to meet all three requirements in at least one of the previous two years.
3. Section 4.3.7 - Remove this section regarding written plans for closure, altogether.
4. Section 4.4 - Insert the word "first" before the word "permit" in the first line.
5. Section 4.5 - Change to: "Persons or organizations shall not be deemed to have submitted an initial application for permit to operate a school in this state unless they submit a properly completed application, the required surety bond and all information and documentation required by this rule. Information and documentation required to be submitted with the initial application includes: "
6. Section 4.5.3 - Insert the word "initial" before the word application in the first line.
7. Section 5.3 - Change the last line to read: "... shall pay the initial application fee."
8. Section 9.1.5 - Insert the words "due in cases where the school does not either teach-out its students or arrange for their teach-out at another institution" after the word "refunds" in the second line.
9. Section 10.1.3 - Insert the word ",term" after the word "course" in the first line.
10. Section 10, 11 and 12 - The rules will need to retain the statutory distinction between accredited and unaccredited institutions; however, the language will need modification. Suggested modifications will follow.

11. Section 11.1.1 - The word "enroll" should be changed to the word "begin".
12. Section 11.1.5 - This section should be modified to parallel federal requirements which are that a refund must be made either 30 days after the school has been notified of the student's termination or within 60 days of the student's last date of attendance, whichever comes first.
14. Section 12.3.10 - Change the sentence to read "... falsely advertise a guarantee of a job" rather than to "imply" guarantee of a job.
15. Sections 13 & 14 - These sections were not reviewed and are subject to further review; however, section 14.2.4 simply will not work.

16. **School Definitions Sections**

Section 2.11 - Add to the end of the sentence: "... or provide or enhance vocational skills, and that does not fall into any category listed in section 3."

Section 3.13 - This section should probably be eliminated since it overlaps other sections and doesn't appear to address situations not already addressed by other sections; however, if it is left in, it needs modified to close a loophole.

Section 3.1.4 - Suggested revision: "Any apprenticeship program, continuing education program, or other training provided by an employer or union, (or an organization contracting with such an employer or union), to the employer's employees or the union's members, or prospective employees or members, without tuition or other fees charged to the trainee."

Section 3.1.5 - Suggested revision: "Organizations offering only non-vocational, personal development/information courses that are represented to the public and conducted solely for personal development/information, and that are not directly or by implication representing or advertising such courses as preparing individuals for a career or enhancing vocational/technical skills or employability."

Section 3.1.7 - Suggested revision: "Those non-profit organizations which offer instruction or training under contract with a Private Industry Council under the Job Training and Partnership Act and/or under other United States Department of Labor training programs and students enrolled in courses or programs of instruction are not charged tuition or other fees."

3. Add a new Section 11.6.5 "A school may also charge a withdrawal fee not to exceed to 5% of the total tuition and fees charged or \$100.00, whichever is less."

Section 12 - See attached pages for changes to the Heading, and Sections 12.2.3, 12.3.10 and 12.5.

Section 13

I believe it is important that students should not only be given a copy of the school's complaint procedures (as required by section 13.3), but that students should be required to exercise their rights under the procedures before the Board gets involved. In my experience, students sometimes get very excited or upset about a matter, frequently based on misinformation, and start complaining to whomever they can without taking the time to attempt to resolve the problem within the school. In the large majority of cases, if students will follow the school's internal procedures, the matter will be satisfactorily resolved; therefore it makes a great deal of sense to require the students to exercise their rights under the school's complaint resolution process before going outside of the school to another level.

I suggest the following language be added as Section 13.11: "Students shall utilize the school's complaint resolution procedures as a prerequisite to filing a complaint with the Board. Upon receipt of a student complaint, the Board shall determine whether the student has attempted to resolve the complaint utilizing the school's complaint resolution procedures before proceeding, and shall notify the student if the student has failed to exercise rights available to the student under the school's complaint resolution procedures.

- 8.3.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000);
- 8.3.2 An application for each representative of the school that will be soliciting students in West Virginia;
- 8.3.3 A revised listing of all programs to be offered if changes are made with new ownership; and
- 8.3.4 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school.

SECTION 9. SCHOOL CLOSING

- 9.1 A school which is closing, either voluntarily or involuntarily, shall:
 - 9.1.1 Inform the Chancellor of this action immediately by certified mail;
 - 9.1.2 Supply the Chancellor with the name, address, and telephone number of the person responsible for closing arrangements;
 - 9.1.3 Supply the Chancellor with the name, address, telephone number, and the course of study for each student who has not completed his or her course of study;
 - 9.1.4 Supply the Chancellor with information on the amount of class time left for each student to complete the course along with the amount of entitled refund, if any, for which each student is eligible if the school fails to deliver the instruction for which the student had contracted;
 - 9.1.5 Inform currently enrolled students by written notice of the procedures they are to follow to secure refunds or to continue their education and supply the Chancellor with a copy of this notice; and
 - 9.1.6 Inform the Chancellor of plans to store the permanent student records and the procedure to obtain copies.

SECTION 10. STUDENT ENROLLMENT CONTRACT—*unaccredited Schools*

- 10.1 *unaccredited* Each school shall utilize a written enrollment contract which specifies both the school's and student's legal rights and obligations. The agreement may incorporate into the contract by reference information in the school's catalog, student handbook, or other school publication without printing such

information or publication in the contract itself. The enrollment contract must contain, but is not limited to, the following:

- 10.1.1 The name and address of the school;
 - 10.1.2 The name of the course of study or program, including the number of credit or clock hours of classroom instruction, home study lessons, or other study units required;
 - 10.1.3 The total cost of the course^{term} or program for which the student is obligated under the contract including tuition, fees, books, and any other charges the student will incur shall be clearly stated;
 - 10.1.4 The school's cancellation and refund policy, including an explanation of the procedures a student will follow to cancel the contract or enrollment agreement; and
 - 10.1.5 The signature of the student applicant, a parent or other sponsor if the student is under the age of eighteen (18), and the appropriate school officials, plus the date signed.
- 10.2 An application for admission is not to be construed as binding on the student, therefore limiting total student financial obligation to the payment of an application fee.
- 10.3 The school shall provide the student with a copy of the completed enrollment agreement that is signed and dated.

10.4 Notwithstanding the above requirements, the enrollment agreement of a school shall be deemed to meet all requirements if:

- 10.4.1 The school's physical facilities are located within the state;
- 10.4.2 The school has been under permit since July 1, 1979, under continuous ownership within the same immediate family; and
- 10.4.3 The school is accredited by an appropriate nationally recognized accrediting agency approved by the United States Department of Education.

See enclosed
paragraph
in Fax Memo

CANCELLATION and REFUND POLICIES - *Unaccredited Schools*

tain a permit, ^{*an unaccredited*} school shall have a cancellation and refund policy that incorporates the following provisions:

erm and withdraws e (1) week or ten ; entitled to a refund the charges less the

erm and withdraws ten percent (10%) (25%) of the term is eventy-five percent re application fee.

ter completing more 25%) through fifty ; entitled to a refund he charges less the

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In FAX Memo
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~~nationally recognized~~
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ause to be made any with the offering or ; false or misleading.

1 Refund policy relative to the unused portion of tuition, fees, and other charges if the student does not ~~enroll in the school,~~ *begin classes* withdraws, or is dismissed.

2 All fees and payments remitted to a school by a prospective student shall be refunded, minus any stated application fee not to exceed fifty dollars (\$50), if the student is not admitted due to ineligibility.

3 An admitted student applicant may cancel, by written notice, his or her enrollment any time prior to the first class day of the session for which the application was made, and the school shall refund all tuition paid by the student minus an application fee not to exceed fifty dollars (\$50.)

For the purposes of refund calculations, an individual's status as a student shall be considered terminated by the school not later than seven (7) calendar days after the last day on which the student actually attended the school. Termination may be effected earlier by proper notification. A home study program of instruction shall be terminated if a school does not receive a lesson or an appropriate response from the student within six months after receipt of the last lesson, and the date of withdrawal shall be the date of the last lesson received. The date of withdrawal initiated by a student shall be the date a letter is postmarked or proper notification is given. The school shall provide a receipt for each letter or withdrawal notice received.

Schools are required to submit refunds to individuals or the appropriate agency within thirty (30) days after receipt of a proper notification of termination from a student.

The student refund policy for withdrawals and terminations for schools not accredited by ~~a national~~ accrediting agency recognized by the United States Department of Education must at a minimum comply with the following:

12.2 In its advertising, a school shall:

- 12.2.1 Limit reference to its authority to operate to "Permit to Operate Issued by the State College System of West Virginia Board of Directors";
- 12.2.2 Disclose that it is a home study school if it provides such instruction;
- 12.2.3 Advertise ^{or Average} starting salaries of its former students only if these claims can be documented for the most recent twelve- (12) month period preceding the advertisement.

12.3 In its advertising, a school shall not:

- 12.3.1 Advertise that it is "supervised," "recommended," "endorsed," "approved," or "accredited" by the board;
- 12.3.2 Describe its courses of instruction and subjects in a misleading manner.
- 12.3.3 Use photographs or other illustrations in ways which misrepresent the size and location of the school, its equipment, and facilities for the career for which the student is being trained;
- 12.3.4 Represent that it is endorsed by or affiliated with a college or university, unless such statements can be documented;
- 12.3.5 Advertise the transferability of its credits to specific colleges and universities unless it has written evidence on file of current acceptability of such credits from said colleges or universities;
- 12.3.6 Falsely advertise that it is endorsed by manufacturers, business establishments, or organizations engaged in the line of work for which the school gives training;
- 12.3.7 Advertise accredited status unless such status has been received from an accrediting body currently listed as recognized by the United States Department of Education and such accrediting body must be named if used in any advertisement or promotional material;

- 12.3.8 Advertise as an employment agency, or under the same or similar name as such an agency, or advertise training courses in the "Help Wanted" section of any newspaper;
- 12.3.9 Advertise any tuition, fees, or other charges in amounts other than those currently on file in the Chancellor's Office or advertise them without showing the total costs;
- 12.3.10 Falsely ~~imply~~ ^{advertize} a guarantee of job placement or employment at a certain wage; or
- 12.3.11 Use endorsement, commendations, or recommendations by students without their written consent.
- 12.4 A school eligible to offer a course of instruction or program leading to an associate degree or specialized associate degree shall, in any advertisement, promotional material, or the school catalogue refer to this degree designation as an "Associate Degree" or a "Specialized Associate Degree."
- 12.5 ~~Those schools that are accredited by an appropriate nationally recognized accrediting agency approved by the United States Department of Education, may adhere to the accrediting agency's criteria pertaining to advertising to satisfy the requirements of this section. However, in the event that a particular area of this section is not addressed by accrediting agency criteria, the provisions of this section must be followed.~~
Section 12 does not apply to
recognized

SECTION 13. STUDENT COMPLAINTS

- 13.1 A school shall resolve student complaints promptly and fairly and shall not subject a student to punitive action as a result of a written complaint having been filed with the school or Chancellor.
- 13.2 The school shall have written procedures that describe in detail how a student may register a complaint, and how the school will investigate and attempt to resolve the complaint.
- 13.3 The school shall provide all enrolled students with a written copy of the student complaint procedures and make prospective students aware that such procedures exist and provide copies upon request.
- 13.4 Each school that is being investigated, as a result of a written student complaint, will be notified by the Chancellor that such an investigation is being conducted and shall be informed of the nature of the complaint.



West Virginia Legal Services Plan, Inc.

1-800-642-8279

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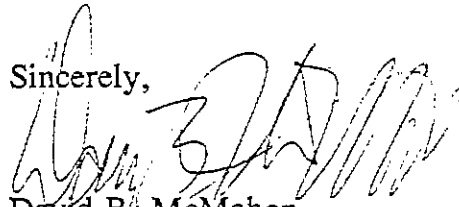
August 18, 1994

Mr. James L. Skidmore
Assistant Director for Community Colleges
and Vocational Education
1018 Kanawha Boulevard, East - Suite 700
Charleston, West Virginia 25301

Dear Mr. Skidmore:

Enclosed please find my comments on the Board's proposed rule regarding proprietary, correspondence, business, occupational and trade schools.

Sincerely,


David B. McMahon
Attorney at Law

DBM/jm

COMMENTS ON
PROPOSED RULE REGARDING
PROPRIETARY, CORRESPONDENCE, BUSINESS, OCCUPATIONAL AND TRADE SCHOOLS

Code of State Regulations Title 131, Series 3
(131 C.S.R. 3 - 1 et seq.)

Prepared by:

David B. McMahon
West Virginia Legal Services Plan, Inc.
1033 Quarrier Street, Suite 700
Charleston, West Virginia 25301

August 18, 1994

SECTION 1. GENERAL.

Provision 1.1 lists a very narrow scope. Bonds and advertising are also included in the rules. Either everything should be listed or it should simply state, "all regulation of proprietary, correspondence, business, occupational and trade schools authorized by state code by the Board of Directors.

Provision 1.2 any general rule making authority of the Board of Directors should also be included under authority.

SECTION 2. DEFINITIONS.

Provision 2.9 appears to be garbled. The second sentence should read, "The transfer of partial ownership of a school to another partial owner as the result of the death of a partial owner is not considered a change of ownership for the purposes of this rule." Some ownerships may be partnerships so the use of the term "stockholder" alone is insufficient. It is unclear how the term "sale" is appropriate unless we are talking about a sale by the estate or another person who took an ownership interest in the school by dissent or distribution and sold it to a family member. If that is what is meant it should be stated more clearly. The first sentence of the definition should define change in ownership by using the terms "change of ownership, managing ownership or control." I also suggest adding, "or when the largest individually held portion of ownership is changed to ownership by a person who is not a member of the immediate family." Schools can be under partnerships and where there can be silent partners. Also where there can be different kinds of stock issued. It is important to cover where true control of the activities of the school moves outside the immediate family. That should be a change of ownership.

Provision 2.10 is a good definition for drafting purposes. I note however that throughout the rest of the draft phrases like "person or organization" are used. Since

the term "person" is defined have to include "organization," the additional language is inappropriate. The best case scenario is that it is surplusage. The worst case is that a court might read the use of the additional words "or organization" as providing a more specific limitation of the use of the word "person" in the particular provision in question than the term "person" would encompass if it was used on its own invoking the definitions section. I suggest using the "search" function of your word processing program to locate every use of the word "person" and make sure that the word "person" is used by itself unless there is a good reason to limit the application of the specific provision to something less than "person" as defined herein.

Provision 2.11 Is this definition broad enough to cover proprietary schools that are not making a profit? Are there "non-profit" schools that simply pay certain managerial people high salaries. I suggest this definition read, "Schools providing education to students for a business occupation or trade which are not [state college and universities]." Then count on the Section 3 exemptions to take care of the rest. Or just eliminate this definition and rely on the exemptions section.

Provision 2.12 uses the term "employed." What if the school just contracts with somebody. I suggest replacing the term "employed" with the word "used" or simply state, "a person who acts as an agent, solicitor, procurer, broker, to produce students or enrolees or applicants for any school subject to this rule." Also the limitation in the definition that the solicitation must be made in the State of West Virginia will avoid regulation of crooked schools who operate in West Virginia but only solicit in nearby unregulated states. West Virginia should have the power to control schools, like correspondence schools, within its borders.

SECTION 3. EXEMPTIONS.

In Provision 3.1.3 the use of the terms, "on a contractual basis" is not a good phrase legally. It has a much more general meaning that is needed or intended. It is also not clear who the contract is between. If this section is designed for classes where the employer wants their employees to be trained, then a provision could read, "Any training in which the students provide services or other benefits to a person who is paying for or providing the training if the student is not charged and if there is no advertisement to persons other than to those who provide services or benefits to the person paying for the training." Note that limiting the charges to "tuition" may be too narrow. Devious schools will get around it by charging for "materials," etc.

In Provision 3.1.4 the word "corporate" should be deleted. It is surplusage. It is at best unnecessary. At worst it could limit the exemption for unions to those doing corporate training. See my comment above on Provision 2.10. The words "tuition and/or fees" should be eliminated and the words "the students" should be inserted in lieu thereof. For one thing, tuition or fees are a charge but not to the students. And again we do not want to allow charges for materials, etc. which would be tuition by another name.

Provision 3.1.5 is good but should have added to the end the words: "or advancement thereof."

Provision 3.1.7 should end with the existing word change. The remaining words should be eliminated for reasons stated above.

Provision 3.1.9 does not need the first word.

SECTION 4. APPLICATION FOR PERMIT.

Provision 4.2 contains one of the first confusing uses of the word "person" which has now been defined in the definitions. Certainly the word "or corporation" are unnecessary. The words "as defined in Section 2 of this Rule" are unnecessary but may refer the reader back to Section 2 so their inclusion may be beneficial. This reference may also be appropriate other places in the rule where the term "person" is used.

Provision 4.3.6 does not need the word "official." People are representatives of the school or they are not, and that is the case whether or not the term "official" appears anywhere in their description or title. Who decides if they are official. This term could improperly limit the applicability of the provision.

In Provision 4.3.8 the terms "letter of" appear to unnecessarily narrow "accreditation." The school may have a letter of accreditation but they may be appealing the revocation of it. That is a status which should be reported.

Provision 4.5.1 should be changed to read "A listing of the prior operating activities of the applicant's owner or owners in this state, the United States, or another country." First, this would eliminate people who had problems in Canada from coming in. Secondly, it would avoid corporate name dodging. If only the applicant "person" corporation has to give its history, then one individual or a group of individuals could own a series of corporations who rip off students. The owners of the corporation would rip off students under one corporate name, fold that corporation, and start another corporation which would be the applicant which would have no school history, and rip off students again. Note that if the applicant is a publicly held corporation then there may be difficulty in listing all the shareholders. So it may be the case that an exception should be made for publicly held corporations. In that case the owners of more than five percent of the stock should only have to have their school activities listed.

SECTION 5. PERMIT APPLICATION FEE.

Provision 5.3 should be amended to read "Any application submitted more than sixty days after the last effective date of the applicant's previous surety bond shall be considered a new, initial application." This language probably still needs some additional work. The statute uses "renewal" of a permit. However, the statute also says permits are only good for one year. So, a existing school does not renew the permit each year it gets another one, it is just considered to be an experienced school.

SECTION 6. SURETY BOND REQUIREMENTS.

Provision 6.1 has a pure drafting problem since it appears to conflict with 6.2 and 6.6. Only 6.2 has "however" to solve the problem which is not good drafting form. I suggest adding at the end of Section 6.1 the following language: "unless required otherwise by a provision of this section." Even better might be "unless required otherwise by Section 6.2 or 6.6, [or whatever other sections are applicable]."

Provision 6.2. The words "as of" are not clear.

Provision 6.7 is not clear. I suggest, "The Board may increase the bond requirement of the school to one hundred and fifty thousand dollars if the school has its accreditation terminated or its eligibility under the Higher Education Act of 1965, as amended, is terminated for cause." It is unclear why an unaccredited school should not have its bond raised if its accreditation is terminated even if it cannot be shown that its accreditation was terminated "for cause." An unaccredited school no longer has to meet accreditation requirements.

Provision 6.8 should begin by stating, "If in the Board's discretion the school's continued financial . . ." There is enough delay in the process in this already. The school should not be able to challenge the Board's initial doubt by requiring that doubt to be proven to the satisfaction of a judge in circuit court. To read better the word "exceed," in the last sentence should be replaced by the words "more than."

In Provision 6.9, to remain consistent with the Freedom of Information Act, the words "by the Board" should be inserted after the word "used."

SECTION 7. MAINTENANCE OF RECORDS.

Provision 7.2 for clarity, should be amended to read as follows, "A school shall maintain academic records suitable for transcript purposes for each student for fifty calendar years after the student has departed the school or becomes sixty-five years of age. The records shall include, as a minimum,"

Provision 7.2.7 should be amended to read, "Indicate whether the student graduated or completed the course." The current language appears to mandate a statement that the student graduated or completed the course.

SECTION 9. SCHOOL CLOSING.

Generally this is a good provision. An additional section should be added which requires the school to provide information to the student about the student's entitlement to a student loan discharge as a result of the school closing pursuant to 20 U.S.C. §1087 (1992 amendments to the H.E.A.).

SECTION 10. STUDENT ENROLLMENT CONTRACT.

Generally, after advertising, this is a most important and beneficial section. Most students are sold on enrollment before they read the contract, so advertising is more important, but disclosure requirements will limit some of the worst abuses. Provision 10.1 could be clarified and Provision 10.3 could be eliminated if Provision 10.1 started out by saying, "All students shall receive a copy of a written enrollment contract before the schooling begins, which is completed, signed and dated. The contract shall specify both the school's and the student's legal rights and obligations. The agreement may incorporate by reference information in the school's catalog, handbook, or other school publication without printing such information or publication in the contract itself if the student receives a copy before or at the time of signing the contract. The enrollment contract must contain at least the following:"

Between Provision 10.1.3 and 10.1.4 a new provision should be included to read as follows: "The details of the financing of the course or program including the due dates and number of payments of any scheduled payments, the amount of loans which the student will be required to pay back and any interest rate thereon."

Another provision should be added as follows: "10.1.6 specific clear statement of the degree, education, employment, and job placement services which the student will be entitled to without payment of further monies after completion of the full course of education.

An additional paragraph should be added to 10.1 stating the additional requirements for that student for completion of the full program for study if the contract is only for a semester or another subdivision of the full course of study, together with the estimated price thereof.

An additional paragraph should be added to 10.1 stating "time price differential, if any, between paying in advance and paying over time.

Provision 10.4 needs major revisions. At the very least it should have a statement similar to the last sentence of Provision 12.5. Subsection e of *West Virginia Code* §18b-3-5 (1994) give accrediting agency's priority over any state rules regarding "academic standards by schools for the awarding of certificates, diplomas and specialized associate degrees, which may include curriculum, personnel, facilities, materials and equipment." This language is then followed by a number of provisos. The provisos modify the language just quoted. Accrediting agencies are not statutorily authorized to be responsible for consumer protection such as disclosures, plain language, etc. Many of the items listed in Provision 10 deal with matters that are outside "accreditation" standards. West Virginia's statute refers only to accreditation. If the accrediting agency documents go beyond accreditation or whatever West Virginia statutory language is relevant, then those provisions are not grandfathered in by West Virginia's statutory deference to the accrediting agencies. West Virginia's legislation defines the deference

given to accrediting agencies not the other way around. Any truly academic or accreditation standards that are statutorily to be given deference and that are covered by the accreditation agencies in question (whose standards this commentor does not have at the time of the making of these comments) should be specifically noted in the language of each requirement. Other provisions of the rules should be left intact.

SECTION 11. CANCELLATION AND REFUND POLICIES.

Generally this section does not seem to recognize the provisions of *West Virginia Code* §46A-2-138 (1987). The specific cancellation provisions of subsection (a) should be incorporated together with the presumption in the proposed regs that lack of attendance or lack of the return of correspondence school materials is a cancellation. For any correspondence course and for any truck driver, modeling, business or other occupational course with a private proprietary school, termination should be stated to, "cancel any financial obligation for goods or services not received by the [student] prior to the mailing of such notice of cancellation." Indebtedness for correspondence course materials is also limited by the section to the retail value.

Therefore the provisions of 11.1.6 and in particular 11.1.6.4 conflict with state law with regard to those schools, which are most of the schools subject to the regulations.

To the extent it applies, the six month limit in provision 11.1.4 is too long for many courses. It should say, ". . . within six months after receipt of the last lesson, or within twice the amount of time provided for return of the materials by the student, whichever is less, and the date of withdrawal . . ." With regard to correspondence schools the statute requires the refund within twenty days.

Provision 11.1.2 and 11.1.3 conflict with the Code section cited above. A fifty dollar application fee would be particularly inappropriate if the student was not fully made aware of the eligibility requirements.

These state provisions should apply even in the case of transactions controlled by the Higher Education Act unless the Higher Education Act specifically says that a more stringent state law is superseded.

Provision 11.2 is a good clarification of the statute.

Provision 11.3 is inconsistent with the state statute cited above.

Provision 11.4 is a good exercise of comity by the State.

SECTION 12. ADVERTISING.

Generally this is some of the most important student protection. Many low income students are poorly equipped to resist high pressure sales tactics many schools

use when the student comes in and talks to the salesperson at the school in preson. It is therefore important that the hook that gets people in to the school is not misleading. These improper advertisements will also pull students away from more responsible schools.

Provision 12.2.3 should have the following language added on to the end: "For more than fifty percent of the graduating class."

Provision 12.3.5 is an excellent and much needed provision but should be improved by adding after the word "transferability" the words "or possibility of transferability." Also the word "specific" should be removed and the word "said" should be removed. After the word "universities" the following should be inserted: ". . . in the State of West Virginia, in the closest neighboring state, or, only if the specific school and its location is identified, in another college or university.

Provision 12.3.6 is a good provision but the word "falsely" should be deleted and the following language should be added to the end: ". . . unless it has written documentation on file of the current endorsement by such a person."

Provision 12.3.8 and 12.3.9 are excellent provisions. The following language should be added to the end, "including the cost of books, materials, supplies, clothing and other requirements for completion of the course other than pens, pencils and paper."

Provision 12.3.10 is a good provision but should be amended to read: "State or imply a guarantee or assurance of job placement or employment or state or imply a guarantee or assurance of wages at or above a certain wage unless fifty percent of last year's graduates received a job at or above the stated wage."

SECTION 13.

Generally there is no provision which requires the Board to act on a student complaint. It only requires the school to act on a student complaint. An additional provision should be added between 13.3 and 13.4 which states that, "The Board shall begin an investigation of every student complaint within thirty days. In the event any student complains to the Board in oral fashion, the student shall be told to file a written complaint in order for their investigation to proceed. The Board may withhold the name or identifying information about the student from the school unless it is necessary in order to investigate the complaint and it advises the student that they will be revealed to the school. The Board shall begin the investigation of the complaint within thirty days of the date of receipt of the written complaint unless, on the face of the complaint, it is a complaint about a matter over which the Board has no jurisdiction, or it is intrinsically not credible. The initial investigation should be completed within sixty days of the complaint or the end of the term, whichever is later." Without this provision the Board will be under tremendous political pressure from time to time not to investigate student complaints or to delay.

Provision 13.2 should make it clear that the school should also provide students with written procedures explaining how to make a complaint to the Board, not just to the school.

Provision 13.6 should have added to the end of it, "and in a new application or renewal application by the school or its owners or operators should be denied. A hearing on action taken pursuant to this provision shall only be on whether the school refused to cooperate with the investigation and not on the merits of the complaint, review or investigation."

SECTION 14. WARNING, SUSPENSION, WITHDRAWAL OR REVOCATION OF ACCREDITATION, LICENSE AND/OR APPROVAL TO OPERATE.

Fifteen days is too long a delay added on to the other delays inherent in the process. It should not take the school more than "three business days after the day upon which the notice was received" for the school to make a photocopy and mail it to the chancellor.

Provision 14.2.4 should have deleted from it the words, "a substantial number of." The provision is already limited by the words, "because of such inadequate training." The chancellor would have to prove the training is inadequate. The chancellor should and also have to go out and run down "a substantial number" of students whose employability was affected. This would be a very time consuming burden. Inadequate training is not made adequate by the fact that only one student complained and/or was found to have his employability affected.

Provision 14.2.5 should also include the school's failure to provide job placement services promised.

Provision 14.4, states "clear and convincing evidence" is required. This exceeds statutory authority. In addition there is no reasonable basis for the requirement. In fact in many of these cases the records and evidence necessary to take adverse action against the school is in the school's records which are in the possession of the school. It is also an unfair burden if the chancellor has no subpoena power.

Provision 14.5 should also provide for copies to go to any complainants.

Provision 14.7 should have an additional sentence added on to read: "A stay of the Board's action may only be granted by the court in which the appeal is made and if authorized by statute or court rule." Appeals can take a long time. This provision allows the court, who is independent of the administrative proceedings the complainant and the school, to make a determination whether the stated merits of appeal are or are not strong enough to justify a stay. The fact that the court to which the case is appealed will have to make the ruling on the stay will also, whether a stay is granted or not granted, call the case to the attention of the court so the court can place it on an appropriate procedural time line.



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August 17, 1994

Mr. James Skidmore
Assistant Director for Community Colleges &
Vocational Education
1018 Kanawha Boulevard, East - Suite 700
Charleston, West Virginia 25301

Dear Mr. Skidmore:

Thank you for the opportunity to comment on the proposed Rule Regarding Proprietary Correspondence, Business, Occupational and Trade Schools. We have thoroughly reviewed the proposed rules and, overall, find them to be very clear, concise and relevant to oversight of proprietary Institutions.

We applaud the Board's practice of school participation in the regulatory process.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Duncan".

Patricia Duncan
State Licensing Coordinator

**MODIFICATIONS TO LEGISLATIVE RULE
TITLE 31 SERIES 3
PROPOSED JULY 1994**

SECTION 2

Section 2.2 Associate Degree and Section 2.13 Specialized Associate Degree

These degrees are authorized by the West Virginia Code, not the BOD. Also, the BOD does not grant such authorization to proprietary schools. Therefore, this definition should be eliminated or totally re-written.

2.7 Financially Sound

The 94 amendments to WV Code 18 b-3-5 establish the AICPA ongoing concern standard as the basis to deem financial soundness. This definition needs re-written, or eliminated entirely since it is superfluous.

2.9 Ownership Change

The 94 amendments to the WV Code do not qualify transfers of ownership interest within a family as only those initiated by death of a family member. Therefore, the reference to (as a result of death) needs removed.

2.1.1 Proprietary School Definition

- A. The heading should be expanded to include business colleges and junior colleges. For example: Proprietary business occupational, trade school, college or private junior college. As an alternative, a concise catchall such as "proprietary educational institution" might be simpler.
- B. The definition is too limited in its reference to preparing individuals for employment. Some organizations may argue that they are simply enhancing technical or vocational/occupational skills. This is a loophole. Therefore, the definition should be expanded slightly to include, not just preparing individuals but providing or enhancing technical or vocational skills.

SECTION 3

3.1.3

- A. Insert the words "non-profit" before school.
- B. Insert the words "student or other" after the word "no" in the third line.

3.1.5

- A. The words "only non-vocational" should be inserted before the word "courses".
- B. At the end of this sentence the words "or enhancing vocational technical skills" should be added.

3.1.7

- A. Should be modified by changing the reference by inserting the words "non-profit" at the beginning of the sentence.

SECTION 4

4.1

Insert the word "and/" before the word "or" in the fifth line.

4.3

- A. Either remove the words "as a condition of issuing the permit" or remove section 4.3.3.
- B. Also, section 4.3.7 is impossible to carry out, because there is no way to ensure a school won't go bankrupt. This section is a back door attempt to circumvent the bonding provisions and it must be eliminated altogether.

4.5.2

Add to the end of this sentence "or other discharge of the school's contractual obligation to the student."

SECTION 5

5.3

There is no basis in the state code for this provision. Also, a school does not have a permit if its old permit expired and may not solicit students, which is a severe penalty in itself.

SECTION 6

Section 6.2 should be modified to insert the word "control" after the word "ownership" in the second line.

Section 6.8 is in direct conflict with the 94 amendments to the state code. First, the amendments established the ongoing concern viability standard as the financial standard. Secondly, the section completely misstates the amendments. This section should state that the bond can be increased up to \$400,000 if "in accordance with the standards of the American Institute of Certified Public Accountants, the schools audited financial statements are qualified because the schools continued financial viability is an ongoing concern and is in doubt." Only at that point may the Board conduct a further review to determine whether or not an increased bond, up to \$400,000, is necessary.

SECTION 7

7.2.3

Change to read: "The starting and completion or separation dates."

SECTION 8

8.1

Under section 8.1 the school should have the option to notify the BOD in advance, but if it fails to do so that shouldn't hold up what is a regulatorily complex transaction which requires coordinating state permitting with re-accreditation and re-certification by USDE. Therefore, the school should have the option, but if it fails to do so, then the school is stuck waiting the 30 days. Also, only changes of ownership resulting in change of control should require notification. If an individual with a small amount of stock sells out, that has no impact on the school and does not generally require approval at other levels.

8.2

Under section 8.2, the reference to change of ownership in the first line should be changed to "a change of ownership resulting in a change control".

SECTION 9

Section 9.1.5 could create "a run on the school" if it were applied to a school that is continuing

operation but planning to close to a teachout. Also, it implies that students are eligible for refunds even if the school continues teaching students and provides complete teachouts. Therefore, this sentence needs qualified by putting at the beginning of the sentence the following statement: "If the school intends to close without teaching out currently enrolled students, it shall inform the students..."

SECTION 10

10.1.3

Section 10.1.3 needs modified to reflect the total financial obligations of the student. Now that some schools charge by the course or term, rather than by the program, the school is not in a position to guarantee a set tuition for a particular program, any more that two or four year colleges can quote anything other than there per term tuition.

10.4

Remove this section.

SECTION 11

Refund Cancellation Policies-There is no statutory basis for regulating cancellation refund policies. This section should be removed. As an alternative, require the student to receive a copy of the refund policy prior to making any irrevocable financial commitments to the school.

SECTION 12

12.3.10

Almost any advertisement by a technical/vocational school could be construed as implying a job or a high likelihood of a job after graduation. The word "imply" is simply too vague. Therefore, change the word "imply" to "advertise". Eliminate 12.5 altogether.

SECTION 13

Under section 13, insert an affirmative statement requiring that substantive and procedural due process will be observed as required by WV Code 18 B-3-5.

13.1

No school can guarantee it can resolve a student complaint. Therefore, insert the words

"attempt" to before the words "resolve" on the first line.

13.4

This violates basic American principles of fairness and due process. If the school has been charged with something and is being investigated, it has the right to have the specifics of the allegation and not just simply the nature of the "complaint". (It is interesting to note that the SPRE regulations, which will also affect public schools, require that the school be given a copy of the actual complaint.)

13.6

There is no legal basis for section 13.6. Also, it violates due process, and violates at least 2 different provisions of WV Code 18 B-3-5. The BOD does have remedies to take action against the school suspected of begin engaged in improper conduct, but it cannot coerce a school to cooperating through use of regulatory "death penalty". Also, it has no right to force a school to cooperate with other government agencies.

SECTION 14

Under section 14, insert an affirmative statement requiring that substantive and procedural due process will be observed as required by WV Code 18 B-3-5.

14.2.3

This section fails to distinguish between material and minor violations. It also defines good cause as merely proof as opposed to an actual determination that the school did anything wrong. Good cause, which triggers punitive action cannot be defined as merely proof which is a little more than evidence as opposed to an actual determination. The word "proof" must be changed to "a final determination" after the school has had a chance to present its evidence. In addition, the following phrase should be inserted after the word "rule" on line two: "in a material manner, warranting a suspension withdrawal revocation of a permit."

14.2.4

This section is completely beyond the bounds of the code. Either remove it (or apply it to public institutions).

14.2.5

This section needs to be expanded by adding the following clause on the end of the sentence: "or otherwise discharged the institution's legal contractual obligations to the students.

14.2.6

Should be limited to the administration of financial aid programs. The term moral turpitude is legally outdated, vague and could technically involve things that the average lay person would not consider.

14.2.7

This section should be removed entirely for the same reasons as 13.6.

14.3

- A. Should be modified to permit the Chancellor (or BOD staff) to make his own preliminary determination. Only then, and if the Chancellor deems there to be justification for an adverse action, should there be any requirement to notify the school.
- B. At that point, it should be mandatory that the school be notified, and all evidence must be presented to the school when it is notified.
- C. In addition this section should permit a opportunity for the institution and the BOD staff to informally resolve any problems or issues. It makes sense to provide an opportunity for the school and the BOD staff to formally resolve a problem rather than go through a formal process every time the Chancellor receives information that good cause may exist. In the first place, the information may be incorrect and the school may be able to demonstrate that without going through the entire formal hearing process. This would save everybody a lot of time and inconvenience. In the second place, if there was a problem at the school that was not of a major nature or it was something that could be addressed fairly easily, wouldn't it be better to address it in a more informal manner. Please see attached paragraph for suggestive alternative language.*

14.3.1

Under 14.3.1, the ten and twenty day periods are inadequate. If the period involved would include a holiday weekend, and the owner happened to be on vacation, the next week, the ten day period would run before the owner even reviewed the notice.

The twenty day period would be completely inadequate for the school to prepare its case, if there was a major controversy. In view of sections 14.3.3 and 14.3.4, it is particularly important that these time periods be expanded. Also, in civil litigation it is customary, in some cases legally mandated, that each side be entitled to at least one continuance as a matter of right.

A new section 14.3.5 should be added which states as follows: "The school shall be provided with all evidence, documents or other information, including witness lists or summaries of testimony to be provided by witnesses at least ten days prior to the hearing. The school shall

have the right to a continuance, if any evidence to be used against the school is not provided in advance as required by this section."

Is there any reference to the fact that schools are entitled an opportunity to take corrective action, as is clearly required by state code, before adverse action can be taken. This must be added.

In addition, the code requires that **all constitutional provisions**, including due process, relating to the protection of property rights... be provided to a school if its permit is suspended or revoked. Under these rules once the Chancellor makes a decision, adverse action is taken against the school before it has the right to appeal, which is a clear due process requirement.

X

Upon receipt by officials at the Central Office of information indicating any of the above grounds exist for suspension, withdrawal or revocation of a school's permit, the Central Office staff shall conduct such investigation as it deems warranted and shall notify the school and it's owner in writing by certified mail, return receipt requested, such notice to include all information provided to the Central Office and whether or not the central office deems an investigation warranted. The Central Office shall provide the school with the all information, evidence or documents developed as a result it's investigation and the school may present evidence to the Central Office or otherwise respond in order to resolve the issues informally prior to the staff making its final determination. If the Central Office concludes a recommendation for suspension, withdrawal or revocation of the permit may be warranted, it shall notify the school in writing by certified mail of its recommendation and its proposed corrective action and, it shall provide to the school all evidence and grounds for such recommendation.