

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

DO NOT MARK IN THIS BOX

FILED

1992 FEB -4 PM 12:43

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

STATE COLLEGE SYSTEM OF WEST VIRGINIA
AGENCY: BOARD OF DIRECTORS TITLE NUMBER: 131

RULE TYPE: Procedural; CITE AUTHORITY WV Code 18B-1-6

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 35

TITLE OF RULE BEING AMENDED: Annual Leave, Sick Leave,
Military Leave and Other Leaves

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 6, 1992 AT 12:00 noon

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Jo Ann Raines
1018 Kanawha Blvd., E.
Suite 700
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Annual Leave, Sick Leave, Military Leave and

Other Leaves

Type of Rule: Legislative Interpretive Procedural

Agency STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS Address 1018 Kan. Blvd., E.,
Charleston, WV 25301

1. Effect of Proposed Rule:	MONETARY		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereaf:
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	N/A	N/A	N/A	N/A	N/A
Current Expense	N/A	N/A	N/A	N/A	N/A
Repairs and Alterations	N/A	N/A	N/A	N/A	N/A
Equipment	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: _____

11-15-98

Signature of Agency Head or Authorized Representative

John J. [Signature]

**TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 35
POLICY BULLETIN NO. 35**

Series 35 specifies the details associated with leave for employees of the State College System. In reviewing the existing policy, it was determined that significant reorganization of the format would make it more understandable. Because the format of the proposed version presented on the following pages differs so substantially from the existing version, it was not practical to use underlines and strike-outs to show the changes.

Other than format, most of the changes are for purposes of clarification. Substantive changes include the specification of the number of days of annual leave which can be transferred, the addition of new sections on parental leave and catastrophic leave, and the modifications required to reflect changes in state law related to military leave.

TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 35
POLICY BULLETIN NO. 35

TABLE OF CONTENTS

SECTION	DESCRIPTION	PAGE
1.	General	3
2.	General Leave Coverage	3
3.	Annual Leave	5
4.	Other Conditions for Annual Leave	6
5.	Sick and Emergency Leave	6
6.	Medical Leave of Absence Without Pay	8
7.	Parental Leave	9
8.	Catastrophic Leave	9
9.	Personal Leave of Absence without Pay	11
10.	Military Leave	11
11.	Special Emergency Leave with Pay	12
12.	Witness and Jury Leave	12
13.	Managing Work Time in Areas Affected By Interruption to Utility Service or Similar Situations	13

**TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 35
POLICY BULLETIN NO. 35**

TITLE: EMPLOYEE LEAVE POLICY

SECTION 1. GENERAL

- 1.1 Scope - Policy regarding annual leave, military leave, leave of absence without pay, sick leave, special emergency leave, catastrophic leave, parental leave, and witness and jury leave for employees of the State College System of West Virginia.
- 1.2 Authority - West Virginia Code § 18B-1-6
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rule - Revises and Replaces Policy Bulletin No. 35 effective June 20, 1987.

SECTION 2. GENERAL LEAVE COVERAGE

- 2.1 Eligibility for annual and sick leave shall be based on the following:
 - 2.1.1 Employees working on a regular and continuing basis for no less than 1950 hours within a twelve consecutive month period are considered to be full-time employees and are eligible for leave as specified in this document.
 - 2.1.2 Employees working between 1040 hours and less than 1950 on a regular and continuing basis during a twelve consecutive month period shall accumulate leave on a pro-rata basis.
 - 2.1.3 Employees working less than 1040 hours are not eligible for leave benefits.

- 2.2 Faculty members on twelve-month appointments are defined as full-time employees and accrue leave according to the appropriate sections of this policy. The provisions of this policy related to annual leave, sick leave, catastrophic leave, special emergency leave, and managing work time in areas affected by interruption to utility or similar situations do not apply to faculty members on annual appointments of less than twelve months.
- 2.3 Annual and sick leave may not be taken before it is accrued. If an employee works less than a full month, annual and sick leave shall be accumulated on a pro-rata basis.
- 2.4 During a terminal leave period, no type of leave may be accrued. Terminal leave is the period following the last day of scheduled work from employment such as resignation, retirement, etc.
- 2.5 Length of service shall be total years of service which includes experience with state institutions of higher education and other state agencies. Continuous service is not required to complete the required term. Annual appointment periods of nine months or more shall be credited for one year of service for annual leave calculation purposes.
- 2.6 A recognized institutional holiday occurring during an employee's leave period shall not be considered as a day of leave, provided the employee is not in a terminal leave period.
- 2.7 Up to fifteen days of annual leave may be transferred from other agencies of state government and state higher education institutions to State College System institutions. Certification of the balance which existed in the agency or institution from which the employee is transferring must accompany the request for transfer and bear the signature of an officer of that agency. A request for transfer must be made within one year from the last day of employment with the other agency or institution.
- 2.8 When an employee transfers from other agencies of state government or from other state institutions of higher education to an institution in the State College System, the employee's accumulated sick leave may be transferred. Written verification of the accumulated amount of sick leave to be transferred must be provided by the state agency or institution of higher education wherein the employee accumulated the sick leave within one year of the date of employment with the institution in the State College System.

- 2.9 An employee is required to notify his/her supervisor immediately if ill or unable to work for any reason and to follow the institution's established procedures for absences from work. The notification shall be given to the immediate supervisor or designee, as determined by established procedures of the institution.
- 2.10 Employees on leave of absence without pay shall not accrue annual or sick leave or years of service credit for any and all full months in which they are off the payroll.
- 2.11 Each institution in the State College System shall keep on file a record showing current leave status of each employee.

SECTION 3. ANNUAL LEAVE

- 3.1 Full-time non-classified employees and faculty with twelve-month appointments shall be eligible for up to twenty-four days leave per year calculated at the rate of 2.00 days per month from the date of employment. However, upon leaving a non-classified position, the accumulation rates outlined in Section 3.2 shall apply.
- 3.2 Employees occupying full-time classified positions shall be eligible for annual leave on the following basis:
 - 3.2.1 Less than 5 years' service: 1.25 days per month;
 - 3.2.2 5 but less than 10 years' service: 1.50 days per month;
 - 3.2.3 10 but less than 15 years' service: 1.75 days per month;
 - 3.2.4 15 or more years' service: 2.00 days per month.
- 3.3 Employees working at least 1040 hours per twelve consecutive months on a regular and continuing basis, but less than 1950 hours shall accumulate annual leave on a pro-rata basis.
- 3.4 Accumulated annual leave for continuing employees may be extended beyond that earned during a period of one year by written approval of the president or his/her designee, but in no case shall it exceed twice the amount earned in any twelve-month period.

- 3.5 An employee is entitled to accumulated leave at termination of service, but in no case may this exceed the limits set in 3.4 above.

SECTION 4. OTHER CONDITIONS FOR ANNUAL LEAVE

- 4.1 At the request of the employee through established procedures, annual leave may be granted because of illness.
- 4.2 The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for an employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the employee. However, departmental needs must be met, and annual leave may not be taken without prior request and approval of the employee's supervisor.
- 4.3 In the event of an employee's death, the value of accumulated annual leave will be paid to the employee's estate.

SECTION 5. SICK AND EMERGENCY LEAVE

- 5.1 Full-time employees shall accumulate sick leave at the rate of 1.5 days per month. All other employees shall accumulate sick leave in accordance with Section 2.1 of this policy.
- 5.2 Sick leave may be accumulated without limit.
- 5.3 Sick leave may be used by the employee when ill or injured or when in need of medical attention or when death occurs in the immediate family.
- 5.4 An employee may use sick leave for a member of the immediate family who is ill, injured, or in need of medical attention. Immediate family is defined as: father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, step children, or others considered to be members of the household and living under the same roof.
- 5.5 Sick leave for more than five consecutive days shall not be granted to an employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution. An employee having an extended illness or

serious injury shall, before returning to duty, obtain satisfactory medical clearance to help ensure adequate protection and shall indicate the employee's ability to perform his/her duties. Such medical clearance shall be presented in writing.

- 5.6 The institution may require evidence from an employee for verification of an illness or other causes for which leave may be granted under this policy, regardless of the duration of the leave.
- 5.7 In cases, except those involving catastrophic sick leave as defined in Section 8.1, where all accumulated sick leave has been used and annual leave is available, it shall be the option of an employee (1) to use any accumulated annual leave until it has also expired, rather than being removed from the payroll, or (2) to retain the accumulated annual leave for use after return to work, but be taken off the payroll immediately after the accumulated sick leave has expired.
- 5.8 On-the-job injuries or occupational illnesses which involve no more than three days of disability leave or absence from work shall not be charged against the employee's accumulated sick leave as long as they are the next three consecutive working days after injury or illness occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of the employee (1) To use earned and accumulated sick and annual leave until both may be exhausted, or (2) to reserve for future use any earned and accumulated sick and annual leave and receive only Workers' Compensation benefits for which adjudged eligible.
- 5.9 Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom shall be, for all job-related purposes, temporary disabilities and shall be treated the same as any other illness or disability would be treated for sick leave entitlement. For this reason, employees shall be entitled to sick leave for their disabilities related to pregnancy and childbirth on the same terms and conditions as they or other employees would be entitled for other illnesses and disabilities. In determining whether an employee is unable to work because of a disability related to pregnancy or childbirth, the same criteria shall be used as would be used in the case of another type of illness or disability.
- 5.10 Sick leave provisions are contingent upon continued employment. When the services of an employee have terminated, all sick leave credited to the employee shall be considered cancelled as of the last working day with the institution, and no reimbursement shall be provided for unused sick leave

except in the event of retirement, in which case sick leave may be converted to insurance coverage or for provisions lawfully provided for at that time. Employees who resign in good standing and are later reemployed may have their total accumulated sick leave reinstated, provided the date of termination is one year or less from the date of reemployment. However, if the employee returns to work after more than one year from the date of termination, no more than 30 days of accumulated sick leave may be reinstated.

SECTION 6. MEDICAL LEAVE OF ABSENCE WITHOUT PAY

- 6.1 Any employee requesting a medical leave of absence without pay must provide the institutional president or the president's designee, through established procedures, with satisfactory medical evidence (such as a statement from the attending physician) that he/she is unable to work. The medical statement shall include a diagnosis, prognosis, and expected date that the employee can return to work. If the evidence is satisfactory, the president or his/her designee may authorize a medical leave of absence without pay only for the period of disability specified by the attending physician.
- 6.2 — The employee shall be expected to report to work on the first workday following expiration of the disability period. Failure of the employee to report promptly at the expiration of a medical leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution. An employee, prior to return to duty shall obtain satisfactory medical clearance to help ensure adequate protection and which shall indicate the employee's ability to perform his/her duties. Such medical clearance shall be presented in writing.
- 6.3 A medical leave of absence without pay may be granted for no more than a twelve consecutive month period. Employees who may need an extended medical leave beyond twelve consecutive months may apply for an extension through institutional procedures or may consider other options, such as disability.
- 6.4 After an employee has taken a twelve-month medical leave, the institution shall continue group health insurance coverage provided that the employee pays the institution the full premium cost of such group health plan.

- 6.5 Any employee who is separated from employment following a medical leave of absence of twelve consecutive months and who had chosen to maintain his/her accumulated annual leave will receive payment for such accumulated annual leave in a lump sum payment.

SECTION 7. PARENTAL LEAVE

- 7.1 A full-time employee who has worked at least twelve consecutive weeks for the state may request up to twelve weeks unpaid parental leave.
- 7.2 The request must be due to birth or adoption by the employee or because of a planned medical treatment or care for the employee's spouse, son, daughter, parent or dependent who has a serious health condition.
- 7.3 The employee must provide his/her supervisor with written notice two weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a written request may be cause for denial.
- 7.4 The employee must provide the employer with certification by the treating physician and/or documentation regarding dependency status.
- 7.5 All annual leave must be exhausted before the parental leave begins. No more than a total of twelve weeks of parental leave may be taken in any twelve consecutive month period.
- 7.6 During the parental leave by an employee, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium cost of such group health plan.
- 7.7 The position held by the employee immediately before the leave is commenced shall be held for a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position. However, the institution may employ a temporary employee to fill the position for the period of the parental leave.

SECTION 8. CATASTROPHIC LEAVE

- 8.1 Catastrophic leave is provided for classified employees and a catastrophic illness is defined as: An illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee

has exhausted all sick leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member if this results in the employee being required to take time off from work for an extended period of time to care for the family member and the classified employee has exhausted all sick leave and other paid time off.

- 8.2 Sick leave may be donated to any classified employee experiencing a catastrophic illness or injury as are defined in Section 8.1. Such leave shall be donated at the request of the classified employee upon appropriate verification that the individual is unable to work due to the catastrophic illness or injury as determined by the president of the institution or senior administrator of the Central Office.
- 8.3 Upon approval for a classified employee to receive catastrophic leave, any classified employee may, upon written notice to the Human Resources Department, donate sick leave in one-day increments. Donations will be reflected as a day-for-day usage deduction from the sick leave balance of the donating classified employee. No employee shall be compelled to donate sick leave.
- 8.4 A classified employee receiving the transfer of sick leave shall have any time which is donated credited to such employee's sick leave record in one-day increments and reflected as a day-for-day addition to the sick leave balance of the receiving employee.
- 8.5 Use of donated credits may not exceed a maximum of twelve continuous calendar months for any one catastrophic illness or injury. The total amount of sick leave donated may not exceed an amount sufficient to insure the continuance of regular compensation and shall not be used to extend insurance coverage pursuant to Section 13, Article 16, Chapter 5 of the Code. The classified employee receiving donations of sick leave shall use any leave personally accrued on a monthly basis prior to receiving additional donated sick leave.
- 8.6 Transfer of sick leave may be inter-institutional. The president or his/her designee shall notify in writing other institutional presidents requesting that the institution poll classified staff for transfer of sick leave. Upon approval of the receiving president, leave transfer will be requested through appropriate institutional procedures.
- 8.7 Each institution and the Central Office shall be responsible for the administration of catastrophic leave and shall develop and disseminate procedures for the administration of this policy.

- 8.8 In no way should catastrophic leave be construed as a leave bank and any donated leave which is not used shall be returned to the donating employee.

SECTION 9. PERSONAL LEAVE OF ABSENCE WITHOUT PAY

- 9.1 An employee, upon application in writing and upon written approval by the institutional president or his/her designee, may be granted a continuous leave of absence without pay for a period of time not to exceed twelve consecutive months provided all accrued annual leave has been exhausted.
- 9.2 The president or the president's designee, at his/her discretion, may require the written approval of the supervisor before accepting the written application of an employee for a leave of absence without pay.
- 9.3 The president or the president's designee, at his/her discretion, shall determine if the purpose for which such a leave is requested is proper and within sound administrative policy.
- 9.4 At the expiration of leave of absence without pay, the employee shall be reinstated without loss of any rights, unless the position is no longer available due to a reduction in staff caused by curtailment of funds or a reduced workload. Failure of the employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution.
- 9.5 During a personal leave, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium costs of such group health plan.

SECTION 10. MILITARY LEAVE

- 10.1 An employee who is a member of the National Guard or any reserve component of the armed forces of the United States shall be entitled to and shall receive a leave of absence without loss of pay, status, or efficiency rating, for all days in which engaged in drills or parades ordered by proper authority, or for field training or active service for a maximum period of thirty working days ordered or authorized under provisions of state law in any one calendar year. The term "without loss of pay" shall mean that the

employee shall continue to receive normal salary or compensation, notwithstanding the fact that such employee may receive other compensation from federal sources during the same period. Furthermore, such leave of absence shall be considered as time worked in computing seniority, eligibility for salary increased, and experience with the institution. An employee shall be required to submit an order or statement in writing from the appropriate military officer in support of the request for such military leave.

- 10.2 ... Benefits of this section shall accrue to individuals ordered or called to active duty by the President of the United States for thirty working days after they report for active service.

SECTION 11. SPECIAL EMERGENCY LEAVE WITH PAY

- 11.1 Special emergency leave with pay may be granted by the president of the institution or his/her designee to full-time employees in the event of extreme misfortune to the employee or the immediate family. The leave should be the minimum necessary, and in no case may it exceed five days within any twelve consecutive month period. Typical events which may qualify an employee for such leave are fire, flood, or other events (other than personal illness or injury or serious illness or death in the immediate family) of a nature requiring emergency attention by the employee.

SECTION 12. WITNESS AND JURY LEAVE

- 12.1 Upon application in writing, an employee of the State College System may be granted leave as indicated hereinafter in this section provided the employee is not a party to the action. Annual leave will not be charged under the provisions of this section.
- 12.2 When, in obedience to a subpoena or direction by proper authority, an employee appears as a witness for the Federal Government, the State of West Virginia, or a political subdivision thereof, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.3 When attendance in a court is in connection with an employee's usual official duties, time required in going and returning shall not be considered as absence from duty.

- 12.4 When an employee serves upon a jury, or is subpoenaed in litigation, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.5 The employee shall report to work if he/she is excused by the court before the end of his/her regular work day. Provisions for employees who work a shift other than day shift shall be made according to institutional policy.

SECTION 13. MANAGING WORK TIME IN AREAS AFFECTED BY INTERRUPTION TO UTILITY SERVICE OR SIMILAR SITUATIONS

- 13.1 Utility Service Interruptions - When extended power and utility service interruptions occur, administrators should make arrangements for employees' usual work routine to be accomplished at alternate work locations, or make affected employees available to other administrators for work in other areas. Also, if an administrator deems it advisable and the employee agrees, time off during the utility service interruption may be granted and charged against an employee's accumulated annual leave. Combinations of the above alternatives may be necessary, but in all cases interruptions of work schedules must be dealt with in accordance with applicable laws, including West Virginia Code 12-3-13. This law is interpreted to mean that if pay is associated with the absence from work, the absence must be charged to accumulated annual leave.
- 13.2 Emergency Situations - In the event that an emergency exists, the president, in conjunction with local or state public safety officials, has the authority to comply with the emergency situation and close the institution. Such a declaration will be transmitted to the chancellor of the State College System. The president, working with public safety officials, will determine when the emergency condition no longer exists. Should an employee be required to work by the president or his/her designee during a declared emergency, the time worked shall be compensated according to the provisions of Policy Bulletin 62. Work time lost by any employee during a declared emergency will be considered regular work time for pay purposes and will not require that the time be charged to annual leave nor will there be a requirement that the time be made up.
- 13.3 Absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, or the employee must be removed from the payroll for the time in question. Where institutions employ the "floating holiday" concept, the holiday record may be charged. Sick leave may not be charged for absence due to weather. Time lost from work may be made up in the same work week at the discretion of the employee's supervisor.



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

GASTON CAPERTON
GOVERNOR

January 31, 1992

The Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

Dear Mr. Secretary:

In the absence of a Secretary of Education and the Arts, I hereby grant consent to the filing of proposed rules for comment by the State College System Board of Directors in the following areas:

- (1) Amending Procedural Rule - Title 131, Series 35; Annual Leave, Sick Leave, Military Leave and Other Leaves;
- (2) Amending Procedural Rule - Title 131, Series 36; Academic Freedom, Promotion, and Tenure, Etc.; and
- (3) Amending Legislative Rule, Title 131, Series 59; Presidential Appointments; Responsibilities and Evaluation.

A copy of each of these proposed rules is attached.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Heywood".

Tom Heywood
Chief of Staff

cc: Paul Marion
John Thralls
Jo Ann Raines