

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

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

CITE AUTHORITY: 18B-1-6

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: Academic Freedom, Promotion
and Tenure, ETC.

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 4, 1992

J. Ann Paines

4.20

TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 36

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SECRETARY OF STATE

Series 36 provides system-wide guidelines for West Virginia public higher education institutions on matters relating to faculty, such as academic freedom, professional responsibility, promotion, tenure and the appeals process. The revised policy provides clearer guidelines to institutions on administering reviews of outside activities and consulting by faculty, and adds a provision on award of emeritus status. The proposed policy also tightens promotion and tenure criteria by emphasizing the holding of an earned doctorate from a regionally-accredited institution.

**TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 36**

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**TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 36**

**TITLE: ACADEMIC FREEDOM, PROFESSIONAL
 RESPONSIBILITY, PROMOTION, AND TENURE**

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes State College System policy and guidelines for institutional policy in matters related to academic freedom, professional responsibility, promotion and tenure.

- 1.2 Authority - West Virginia Code § 18B-1-6.

- 1.3 Filing Date - April 3, 1992

- 1.4 Effective Date - May 4, 1992

- 1.5 Repeal of Former Rule - Repeals and Replaces Series 36 dated June 20, 1987.

SECTION 2. ACADEMIC FREEDOM

- 2.1 Academic freedom at West Virginia State colleges is necessary to enable the colleges to perform their societal obligations as established by the Legislature. The State College System Board of Directors recognizes that the vigilant protection of constitutional freedoms is nowhere more vital than in the colleges under its jurisdiction. Faculty members and students must always remain free to inquire, study, and evaluate.

- 2.2 Through the exercise of academic freedom, members of the academic community freely study, discuss, investigate, teach, conduct research, and publish, depending upon their particular role at the institution. To all of those members of the academic community who enjoy academic freedom, there are, commensurate with such freedom, certain responsibilities. All faculty members shall be entitled to full freedom in research and in the publication of the results of such research, subject to the adequate performance of their other academic duties, which may include designated research, extension service, and other professional duties. Further, each faculty member is entitled to freedom in the classroom in discussing the subject taught. In addition, when faculty members speak or write as citizens outside the college, they shall be free from institutional censorship or discipline.
- 2.3 The concept of academic freedom is accompanied by an equally important concept of academic responsibility. The faculty member at a West Virginia state college is a citizen, a member of a learned profession, and a representative of an educational institution. As such, a faculty member, together with all other members of the academic community, has the responsibility for protecting, defending, and promoting individual academic freedom for all members of the community. The faculty member is responsible also as a teacher for striving to speak with accuracy and with respect for the similar rights and responsibilities of others. In speaking only as an individual or for a limited group, the faculty member should not imply or claim to be a spokesperson for the institution in which he or she holds an appointment.

SECTION 3. APPOINTMENT OF FACULTY

- 3.1 The faculty at any institution in the State College System shall be those appointees of the institution's president as reported to the board. The faculty are those people so designated by the institution's president and may include, but are not limited to, such professional personnel as librarians and those involved in off-campus academic activities.
- 3.2 Faculty fall into one of the three following classifications:
- 3.2.1 Tenured: Those faculty members who have attained the tenure status by official action of the president .
- 3.2.2 Probationary: Those faculty members who have been appointed by the president on a full-time basis and have been designated by the president as being in a tenure track position.

- 3.2.3 Temporary: Those faculty members who have not been appointed in a probationary or tenured status. Their appointment may be full-time or part-time. Temporary faculty shall also include academic professionals, whose primary duties are non-instructional, but who hold a secondary appointment that is instructional in character. No number of temporary appointments shall create any presumption of a right to reappointment as probationary or tenured faculty.
- 3.3 Faculty appointed to tenured or probationary positions at any institution shall be appointed in one of the following ranks:
- 3.3.1 Professor;
 - 3.3.2 Associate Professor;
 - 3.3.3 Assistant Professor; or
 - 3.3.4 Instructor
- 3.4 Other appropriate titles which more accurately indicate the nature of the position may be used upon the recommendation of the president of an institution, subject to approval by the board.
- 3.5 Persons assigned full-time or part-time to administrative or staff duties at any institution may (if qualified) be appointed to, or may retain, one of the foregoing faculty ranks in addition to any administrative or staff title. Such person will be informed in writing at the time of the appointment whether the faculty rank is as a tenured member, probationary member, or temporary member of the faculty. Administrative or staff personnel who are not appointed to a faculty position are not faculty and therefore are not entitled to the protections provided by this rule.
- 3.6 Other faculty hold temporary appointments which may be part-time or full-time and are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. Temporary appointments are appointments for a specified period of time as set forth in the notice of appointment. Since the faculty member thus appointed is not on the tenure track, the timely notice provisions do not apply. Temporary appointees shall have one of the following titles:
- 3.6.1 Any of the faculty rank but designated visiting, research, clinical, extension or adjunct, as applicable to describe the connection or function;

- 3.6.2 Temporary lecturer; or
- 3.6.3 Assistant, designated as graduate, research, clinical, or adjunct, as applicable to describe the connection or function.
- 3.7 Temporary full-time faculty appointments may be used only if one or more of the following conditions prevail:
 - 3.7.1 The position is funded by a grant, contract, or other source that is not a part of the regular and on-going source of operational funding;
 - 3.7.2 The appointment is for the temporary replacement of an individual on sabbatical or other leave of absence. Such appointments outside probationary status may not exceed three years, and are subject to annual renewal.
 - 3.7.3 The appointment is for the purpose of filling an essential teaching post immediately, pending a permanent appointment through a regular search and screening process. Such appointments outside probationary status may not exceed three years and are subject to annual renewal.
 - 3.7.4 The position is temporary to meet transient instructional needs, to maintain sufficient instructional flexibility in order to respond to changing demand for courses taught, or to meet other institutional needs. The appointee is to be so notified at the time of the appointment. Such appointments outside probationary status may not exceed three years.
 - 3.7.5 The appointee is granted a primary appointment as an administrator or to perform other non-instructional duties, with a secondary appointment that is instructional in character. Any faculty rank or teaching would be considered temporary, renewable on an annual basis. The appointee must be notified in writing of the status of any faculty rank.
- 3.8 The president of an institution shall make all tenured, probationary, and temporary faculty appointments at the institution after consultation with appropriate faculty and other collegiate units, and report those actions to the chancellor.

- 3.9 Every faculty appointment at any institution shall be for one fiscal year, or part thereof, in accordance with and in compliance with the annual budget of the board, or supplementary actions thereto, as provided by law.
- 3.10 Every such appointment shall be in writing and a copy of the appointing document shall be furnished to the person appointed. Such document shall contain the terms and conditions of the appointment.

SECTION 4. FACULTY -- TYPES AND CONDITIONS OF APPOINTMENT

- 4.1 Full-time appointments to the faculty of an institution, other than those classified as temporary, shall be either tenured or probationary.
- 4.2 All temporary appointments, as defined in Section 3 of this rule shall be neither tenured nor probationary, but shall be appointments only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.
- 4.3 The appointment of a person to a full-time position at an institution is made subject to the following conditions:
 - 4.3.1 The appointee shall render full-time service to the institution to which appointed. Outside activities shall not be restricted unless such activities or employment interfere with the adequate performance of academic duties. The institution expects its faculty to give full professional effort to assignments of teaching, research and service. It is, therefore, considered inappropriate to engage in gainful employment outside the institution which is incompatible with the faculty member's contractual commitment to the institution. Moreover, it is considered inappropriate to transact personal business unrelated to the institution from one's institutional office, or at times when it might interfere with commitment to the institution. The administration of each institution shall establish a program of periodic review of outside services of appointees to guide faculty members.
 - 4.3.2 If outside employment or service interferes with the performance of the regular instructional duties of the appointee, the institution has a right to (a) require the appointee to cease such outside employment or service which interferes with institutional duties of the appointee or (b) make such adjustments in the compensation paid to such appointee as are warranted by the appointee's services lost to the institution, and by the appointee's use of institutional equipment and materials.

- 4.3.3 For members of the faculty, the institution, however, permits and encourages a reasonable amount of personal, professional activity, such as consulting, outside the faculty member's reasonably construed total professional responsibilities of employment by and for the institution, provided such activity: (1) further develops the faculty member professionally, (2) does not interfere with teaching, research and service responsibilities to the institution, and (3) is consistent with the mission of the institution.
- 4.4 If the status of a full-time faculty member changes from temporary to probationary, the time spent at the institution may, at the discretion of the president, be counted as part of the probationary period.

SECTION 5. JOINT APPOINTMENTS

- 5.1 Faculty members may be appointed to perform academic duties at two or more institutions, which duties may include teaching, research, counseling, or other services. For administrative purposes, one institution shall be designated the faculty member's "Home Institution," which institution shall be responsible for granting promotions, raises in salary, and tenure: Provided, however, that when cause therefore shall occur, appropriate counseling, disciplinary action, and the like shall be the responsibility of the institution where the occurrence arose.
- 5.2 The conditions and the details of the faculty member's joint appointment, including the designation of the "home institution" and any other arrangements, shall be specified in the agreement between the faculty member and the presidents of the institutions sharing the faculty member's services. A joint appointment will be made only with consent of the faculty member.
- 5.3 Full-time faculty members appointed under joint or contractual appointments shall continue to be considered full-time employees of the "Home Institution."

SECTION 6. EMERITUS STATUS

- 6.1 Emeritus status is an honorary title awarded to a retiring faculty member or administrator for extended meritorious service. Each institution shall establish a policy regarding emeritus status and file the policy with the chancellor. There is no salary or emolument attached to the status other than such privileges as the institution may wish to extend.

SECTION 7. PROMOTION IN RANK

- 7.1 Within the following framework, each president shall establish, in cooperation with the faculty or duly-elected representatives of the faculty, guidelines and criteria for promotion in rank:
- 71.1 There shall be demonstrated evidence that promotion is based upon a wide range of criteria, established by the institution in conformance with this document and appropriate to the mission of the institution. Examples appropriate to some colleges might be: Excellence in teaching; accessibility to students; professional and scholarly activities and recognition; significant service to the college community; experience in higher education and at the institution; possession of the earned doctorate, or the highest earned degree appropriate to the teaching field, granted by a regionally accredited institution, or special competence that is deemed to be equivalent to such academic credentials; publications and research; potential for continued professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to promotion shall rest with the institution.
 - 7.1.2 There shall be demonstrated evidence that, in the process of making evaluations for promotions, there is participation of persons from several different groups, such as: Peers from within and without the particular unit of the institution, supervisory administrative personnel such as the department/division chairperson and the dean, and students.
 - 7.1.3 There shall be no practice of granting promotion routinely or because of length of service, or of denying promotion capriciously.
 - 7.1.4 The institution shall provide copies of its general guidelines and criteria for promotion to the chancellor and shall make available such guidelines and criteria to its faculty.
- 7.2 Promotion shall not be granted automatically, but shall result from action by the president of the institution following consultation with the appropriate academic units.

SECTION 8 FACULTY RESIGNATIONS

- 8.1 A faculty member desiring to terminate an existing appointment during or at the end of the academic year, or to decline reappointment, shall give notice in writing at the earliest opportunity. Professional ethics should dictate due consideration of the institution's need to have a full complement of faculty throughout the academic year.

SECTION 9 TENURE

- 9.1 Tenure is designed to ensure academic freedom and to provide professional stability for the experienced faculty member. It is a means of protection against the capricious dismissal of an individual who has served faithfully and well in the academic community. Continuous self-evaluation, as well as regular evaluation by peer and administrative personnel, is essential to the viability of the tenure system. Tenure should never be permitted to mask irresponsibility, mediocrity, or deliberate refusal to meet academic requirements or professional responsibilities. Tenure applies to those faculty members who qualify for it and is a means of making the teaching and research profession attractive to persons of ability. There shall be demonstrated evidence that tenure is based upon a wide range of criteria such as: excellence in teaching; accessibility to students; professional and scholarly activity and recognition; significant service to the college community; experience in higher education and at the institution; possession of the earned doctorate or the highest earned degree appropriate to the teaching field, granted by a regionally accredited institution, or special competence that is deemed to be equivalent to such academic credentials; publications and research; potential for continued professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to tenure shall rest with the institution.
- 9.2 In making tenure decisions, careful consideration shall be given to the tenure profile of the institution, projected enrollment patterns, staffing needs of the institution, current and projected mission of each department/division, specific academic competence of the faculty member, and preservation of opportunities for infusion of new talent. The institution, while not maintaining "Tenure Quotas," shall be mindful of the dangers of losing internal flexibility and institutional accountability to the citizens of the state as the result of an overly tenured faculty. Tenure may be granted only to people in positions funded by monies under the control of the State College System Board.

- 9.3 Tenure shall not be granted automatically, or for years of service, but shall result from action by the president of the institution following consultation with appropriate academic units.
- 9.4 Tenure may be granted at the time of appointment by the president. In the case of probationary appointees, tenure may be attained only by faculty who hold the rank of assistant professor or above.

SECTION 10 PROBATIONARY STATUS

- 10.1 When a full-time faculty member is appointed on other than a temporary or tenured basis in any of the institutions of higher education in the State College System, the appointment shall be probationary.
- 10.2 During the probationary period, the terms and conditions of every reappointment shall be stated in writing, with a copy of the agreement furnished the individual concerned within fifteen days following receipt of the board's budgetary allocations and guidelines.
- 10.3 The maximum period of probation shall not exceed seven years. Before completing the sixth year of a probationary appointment, any nontenured faculty member shall be given written notice of tenure, or offered a one year written terminal contract of employment. During the probationary period, faculty members may be granted tenured appointment before the sixth year of service, such appointment to be based upon criteria established by the institution and copies provided to the chancellor .
- 10.4 During the probationary period, contracts shall be issued on a year-to-year basis, and appointments may be terminated at the end of the contract year. During said probationary period, notices of nonreappointment may be issued for any reason that is not arbitrary, capricious, or without factual basis. Any documented information relating to the decision for nonretention or dismissal shall be provided promptly to the faculty member upon request.
- 10.5 After the decision regarding retention has been made by a president, he or she shall notify the probationer of the decision as soon as practicable. In cases of nonretention of faculty who began service at the start of the fall term, formal notification shall be given:
- 10.5.1 Not later than March 1 of the first academic year of service.

- 10.5.2 Not later than December 15 of the second academic year of service; and
- 10.5.3 At least one year before the expiration of an appointment after two or more years of service in the institution.
- 10.6 Faculty appointed at times other than the beginning of the academic year may elect to have those periods of appointment greater than half an academic year, considered as full year for tenure purposes only. Probationary appointments for one half an academic year or less may not be considered time in probationary status. Failure to provide timely notice of nonretention to probationary faculty would lead to renewal of appointment for an additional year, but not prejudice further continuation after that additional year.
- 10.7 Following receipt of the notice of nonretention, the faculty member may appeal such nonretention decision by requesting a statement of reasons and then requesting a hearing before the institutional hearing committee, as provided in Section 15 of this rule. The request for a statement of reasons shall be in writing and mailed to the president within ten days of receipt of the notice of nonretention, and the president, within ten days after receiving that request, by certified mail, return receipt requested, shall provide the faculty member with a statement of reasons for nonretention, which statement is only for purposes of informing the faculty member of reasons for nonretention prior to the institutional hearing (and therefore is not a statement of reasons referred to in section four, article seven, chapter eighteen-B of the Code). Upon receipt of this preliminary statement of reasons, the faculty member may request a hearing before the institutional hearing committee in accordance with Section 15 of this rule and the hearing shall be conducted as provided therein. The faculty member's request for hearing shall be in writing and mailed to the president within ten days of receipt of the preliminary statement of reasons.
- 10.8 Following receipt of the summary, findings, and recommendation of the institutional hearing committee in accordance with Section 15 of these rules, the president shall issue a decision either setting aside or affirming the earlier issued notice of nonretention. If the nonretention is affirmed, upon request of the faculty member in accordance with Code section four, article seven, chapter eighteen-B, he shall inform the faculty member with a formal statement of the reasons for nonretention issued in accordance with Code section four, article seven, chapter eighteen-B, and the faculty member in accordance with Code section four, article seven, chapter eighteen-B may appeal such decision by requesting a hearing from the Board of Directors within ten days after receiving the statement of reasons.

If the faculty member, following the institutional hearing, fails to request a statement of reasons in accordance with Code section four, article seven, chapter eighteen-B from the president, the notice of nonretention shall be final.

SECTION 11 FACULTY EVALUATION

- 11.1 All faculty, except tenured faculty, shall receive a yearly written evaluation of performance directly related to responsibilities as defined by the institution.
- 11.2 Tenured faculty shall be similarly evaluated at least every third year.
- 11.3 Evaluation procedures shall be developed at the institutional level, and a copy sent to the chancellor and filed in the Central Office. Such procedures must be multidimensional and include criteria such as peer evaluations, student evaluations, and evaluations by immediate supervisors.

SECTION 12. DISMISSAL

- 12.1 Causes for Dismissal: The dismissal of a faculty member shall be effected only pursuant to the procedures provided in these policies and only for one or more of the following causes:
 - 12.1.1 Demonstrated incompetence or dishonesty in the performance of professional duties;
 - 12.1.2 Personal conduct which substantially impairs the individual's fulfillment of institutional responsibilities;
 - 12.1.3 Insubordination by refusal to abide by legitimate reasonable directions of administrators or of the board;
 - 12.1.4 Physical or mental disability making the faculty member unable, within a reasonable degree of medical certainty and by reasonably-determined medical opinion, to perform assigned duties; and
 - 12.1.5 Substantial and manifest neglect of duty.

- 12.2 Notice of dismissal for cause: The president of the institution shall institute proceedings by giving the faculty member a written dismissal notice by registered or certified mail, return receipt requested, which dismissal notice shall contain:
- 12.2.1 Full and complete statements of the charge or charges relied upon;
 - 12.2.2 A description of the appeal process available to the faculty member (1) in accordance with Sections 15, 16, and 17 of this rule; and (2) in accordance with the provision of article twenty-nine, chapter eighteen of the Code of West Virginia; and
 - 12.2.3 A statement that the faculty member has the right to elect to have the hearing conducted either by an institutional hearing committee or a hearing examiner of the board .
- 12.3 Answer and Service: Within thirty days from the date of receipt of dismissal notice, the faculty member may file a written answer to the charges. The period for filing the answer may be extended by the president for good cause. The answer shall also contain a request for an institutional hearing committee, as provided in Section 15 of this rule, or a hearing examiner, as provided in Section 16 of this rule. If the faculty member fails to file a timely answer, the notice of dismissal shall be final.

SECTION 13. TERMINATION DUE TO REDUCTION OR DISCONTINUANCE OF AN EXISTING JOB

- 13.1 A faculty member's appointment may be terminated because of the reduction or discontinuance of an existing program at the institution as a result of program review, in accordance with appropriate rules relating to review of academic programs, provided no other program or position requiring equivalent competency exists. If, within two years following the reduction or discontinuance of a program, a position becomes vacant for which the faculty member is qualified, the president shall make every effort to extend first refusal to the faculty member so terminated.
- 13.2 Institutional policy for accommodating major reduction in or discontinuance of an existing program shall be developed through a collaborative assessment by representatives of administration and faculty and shall be reported to the chancellor prior to implementation.

- 13.3 Notice of nonretention due to program reduction or discontinuance: The president of the institution shall institute proceedings by giving a faculty member written notice of such nonretention by certified mail, return receipt requested.
- 13.4 Answer and Service : Within thirty days from the date of receipt of the nonretention notice, the terminated faculty member may file an appeal with the president which shall be heard by the institutional hearing committee, in accordance with Section 15 of this rule.
- 13.5 The dates of formal notification for tenured and probationary faculty shall be those specified in Section 10 of this rule.

SECTION 14. TERMINATION DUE TO FINANCIAL EXIGENCY

- 14.1 Termination of employment due to financial exigency: A faculty member's appointment may be terminated because of a financial exigency, as defined and determined by the board. Institutional plans for meeting a financial exigency shall be developed through a collaborative assessment by representatives of administration and faculty and shall be reviewed by the board prior to implementation.
- 14.2 Notice of termination due to financial exigency: The president of the institution shall institute proceedings by giving the faculty member written notice of termination by certified mail, return receipt requested, which notice shall contain:
- 14.2.1 A delineation of the rationale used by the board for the determination of a financial exigency;
- 14.2.2 A copy of the implementation procedures used by the institution related to the financial exigency and a delineation of the rationale used for the termination of the faculty member; and
- 14.2.3 A description of the appeal processes available to the faculty member in accordance with Sections 15, 16, and 17 of this rule; and in accordance with the provisions of article twenty - nine, chapter eighteen of the Code of West Virginia;
- 14.3 Answer and Service: Within ten days of the date of receipt of the termination notice, the faculty member may file a written appeal to the Board of Directors, in accordance with Section 16.

- 14.4 To the extent financially feasible, the dates of formal notification for tenured and probationary faculty shall be those specified in Section 10.

SECTION 15. HEARINGS

- 15.1 Grievance procedure options: A faculty member shall have the option of filing grievances; (1) in accordance with the provisions of Section 15, 16, and 17 of this rule, or (2) in accordance with the provisions of article twenty-nine, chapter eighteen of the Code of West Virginia. Copies of the Code sections are available in the office of the president at each institution.
- 15.2 Hearings under board policy: If the faculty member wishes to proceed with a hearing pursuant to the board policies (rather than section one, article twenty-nine, chapter eighteen et. seq. of the West Virginia Code), Sections 15, 16, or 17 of this rule may apply.
- 15.3 Institutional Hearing: In order to assure a fair and impartial hearing, a dismissed (under Section 12) or terminated (under Section 13) faculty member, or a faculty member desiring to appeal a decision of the president on nonretention (Section 10) or promotion (Section 7) shall receive a written notice of the hearing process as hereinafter provided and may avail himself or herself of the following hearing procedure:
- 15.3.1 Institutional hearing committee: Each year the faculty of each institution shall elect thirteen tenured or probationary faculty members, representative of the various ranks in the institution, who shall be known as the hearing panel. Terms may be for one or more years. In the event of a vacancy for any cause, the faculty shall fill the vacancy. If the request is for a hearing before the institutional hearing committee:
- 15.3.1.1 The president shall, within fifteen days of receipt of the request, furnish the faculty member in writing a list of nine of the faculty members of the hearing panel as herein set forth, with instructions to strike four names and return the list to the president within fifteen days. If for any reason the faculty member fails to strike, the president shall, within fifteen days, strike a sufficient number to reduce the members to five, who shall constitute the institutional hearing committee.

15.3.1.2 The president shall promptly notify the five members in writing that they have been selected to constitute an institutional hearing committee and that they are responsible for selecting one of their membership to be chairperson, and shall designate a time and place for their meeting to make such selection and to set a date for hearing the charge or appeal.

15.3.1.3 The chairperson shall give notice by certified mail to the concerned persons of the time and place for hearing the charge or appeal, within thirty days of the date of notice thereof.

15.3.2 The hearing shall be conducted as follows:

15.3.2.1 The hearing committee will hear such proof of facts as may be deemed proper and reasonable and make such investigation and enter such recommendations as the facts justify and the circumstances may require. The faculty member shall have the opportunity to submit evidence relevant to the issues raised in the notice.

15.3.2.2 The hearing will be conducted with as little delay as possible.

15.3.2.3 The faculty member shall have the right to have an advisor or legal counsel at the faculty member's expense.

15.3.2.4 Witnesses will be examined under oath in the manner and form and in the order designated by the committee.

15.3.2.5 Formal court rules of evidence shall not apply in such hearings. Technical forms and allegations in pleadings are not required to be observed, and amendments, supplements, or supplemental statements may be made and filed at the discretion of the institutional hearing committee.

15.3.2.6 Testimony shall be recorded.

- 15.3.2.7 Audio tape of the testimony, together with copies of the exhibits, shall be furnished to the faculty member, at no charge, upon his or her request. If the tape is transcribed at the request of the faculty member, the cost will be equally shared by the faculty member and the institution.
- 15.3.2.8 As soon as practical after the hearing, the hearing committee shall deliver to the president a summary of the hearing and the findings and recommendations of the committee and shall provide a copy of the summary, findings, and recommendations to the faculty member. The president shall, within thirty days after receiving the record and recommendation, issue a decision in writing to the faculty member by certified mail, return receipt requested, and such decision shall be final, unless the faculty member institutes an appeal to the Board of Directors under the procedures set forth in Section 16.

SECTION 16. APPEAL TO THE BOARD OF DIRECTORS

- 16.1 An appeal from any final decision of the president of an institution regarding dismissal, nonretention, or denial of tenure which has the effect of nonretention may be taken by the faculty member following exhaustion of the institutional hearing procedures provided above, in accordance with West Virginia Code, section four, article seven, chapter eighteen-B. A faculty member who wishes to appeal a final notice of nonretention must first request a statement of reasons of nonretention within ten days of receiving such notice. The president must provide the statement of reasons by certified mail within ten days of receipt of such request. The faculty member must file an appeal in writing with the Board of Directors within ten days after receiving the statement of reasons from the president. This appeal shall be designated a petition of appeal and shall contain a statement of reasons why the final decision of the president is erroneous or incorrect, together with any appropriate records and any statements of fact or law.
- 16.2 Such appeal shall be *de novo*, and a record of such appeal shall be made as prescribed herein.
- 16.3 Time is of the essence in filing the appeal, and in the event the appeal is not filed within the required time period, the decision of the president shall be final.

- 16.4 The chancellor shall notify the Board of Directors of the appeal of the faculty member, and within five days after receipt of the petition of appeal of the faculty member, the chancellor shall mail to the faculty member a strike list of the names of hearing examiners who have been selected pursuant to procedures adopted by the Board of Directors, and all of whom shall be duly qualified and licensed attorneys. The faculty member, within five days of receipt of the list of names, shall strike therefrom half of the names and return the strike list to the chancellor, who shall appoint one of the remaining persons as the hearing examiner.
- 16.5 The hearing examiner shall determine the date, time and location at the employing institution for the hearing to be held, and shall give notice thereof, by certified mail, return receipt requested, to the faculty member, the chancellor, and the president of the institution. The hearing must be held within thirty days of receipt of the faculty member's petition of appeal, and the hearing may be continued for reasonable grounds from time to time until completed. It is the sole duty and responsibility of the hearing examiner to determine whether the reasons given for nonretention are arbitrary, capricious, or without factual basis.
- 16.6 The faculty member shall be accorded substantive and procedural due process, including the right to produce evidence and witnesses and to cross-examine witnesses, and the right to legal counsel or other representation at his or her expense.
- 16.7 Testimony shall be recorded on audio tapes, which, together with copies of the exhibits, shall be furnished to the faculty member, at no charge, upon his or her request. If the tape is transcribed at the request of the faculty member, the cost will be equally shared by the faculty member and the institution.
- 16.8 The hearing examiner shall reduce to writing his or her findings, conclusions, and recommendations and shall set forth whether the reasons regarding dismissal, nonretention, or denial of tenure which has the effect of nonretention were arbitrary or capricious or without a factual basis. A copy of the recommendation of the hearing examiner shall be mailed to all persons to whom the notice of hearing was sent within thirty days after the conclusion of the hearing.
- 16.9 If a faculty member desires to appeal the recommendation of the hearing examiner, the faculty member must file an appeal with the Board of Directors within ten days after receipt of the recommendation of the hearing examiner. The appeal filed with the Board of Directors shall be taken as an appeal on the written record submitted from the hearing held

before the hearing examiner. The board, based upon such record may take such action as it deems reasonable and proper in all circumstances and in answer to all of its responsibilities according to law.

16.10 The Board of Directors shall submit its decision in writing to the faculty member and the president of the institution within forty-five days of receipt of the report of the hearing examiner. If the faculty member appeals the recommendation of the examiner, this period is extended to seventy-five days.

16.11 In the case of an appeal from a final decision of nonretention by a probationary faculty member, if the reasons for nonretention are judged to be arbitrary or capricious or without factual basis, the faculty member shall be retained for the ensuing contract year. Such an appointment will not prejudice further continuation after that year.

SECTION 17. FACULTY GRIEVANCE PROCEDURE FOR MATTERS NOT OTHERWISE ADDRESSED IN THIS RULE

17.1 Each college shall provide, through institutional-level procedure, faculty grievance recourse for all appropriate matters not otherwise addressed in this rule. Said recourse shall be a systematic method whereby individual faculty grievances can be reasonably presented and reviewed, and action taken related thereto. The institutional procedures shall normally consist of at least three levels or steps of consideration, commencing at the department or division level and concluding with the president. Grievance actions capable of being resolved by administrative action shall be resolved at the earliest possible stage.

17.1.1 Level one - The faculty member will first seek a resolution of the grievance through informal discussion with his or her academic department or division head.

17.1.2 Level two - If not satisfied with the resolution at the first level, the faculty member shall reduce the grievance to writing and forward it, within fifteen days, to the next reporting level, normally a division head or dean, with a copy to the level one administrator. Within fifteen days, the level one administrator shall submit a written report concerning the disposition of the grievance at level one to the level two administrator. The level two administrator shall render a decision within fifteen days of receipt of the report from the level one administrator.

- 17.1.3 Level three - If not satisfied with the resolution at level two, the faculty member should forward to the president a copy of the grievance, along with the level two administrator's response and supporting documents. In reaching a decision, the president may hold a meeting of concerned parties. At the request of the faculty member or the president, the grievance may be referred to the appropriate committee for its recommendation. The president shall notify the grievant of the decision within fifteen days of receipt of the recommendation of the committee, or of the receipt of the level three appeal, whichever is longer.
- 17.1.4 If there is substantial evidence that the grievance is the result of action taken solely by the president, and that the president therefore cannot remain disinterested or objective in the final resolution of the issue, evidence of injury is provided, and a remedy is feasible, a faculty member may so state in a petition to the chancellor that the issue should be heard by a hearing examiner. A decision will be made by the appeals committee of the board as to whether or not a hearing examiner should be appointed in such grievance, and that decision of whether or not to appoint an examiner will be final.



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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 21 1 57 PM '93

FILED

TO: Marie Carter

AGENCY: Board of Directors

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 17, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 36 TITLE: 131 Board of Directors

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Marie Carter

TITLE OF PERSON SIGNING: Assistant to the Chancellor

DATE: 5/18/93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.