



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-40

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: Yes

RULE NAME: Equal Opportunity and Affirmative Action

CITE STATUTORY AUTHORITY: 18B-1-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 10/30/2019 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Dr. Sarah Tucker

ADDRESS: 1018 Kanawha Boulevard, East
Charleston, WV 25301

EMAIL: chancellors.office@wvhepc.edu

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Establishes equal opportunity and affirmative action policy for four-year public colleges and universities.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Expands and clarifies the protected characteristics and eliminates institutional annual submission of plans to the Chancellor's office. Removes the Chancellors' Equal Employment Opportunity Council.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

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

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 40
EQUAL OPPORTUNITY and AFFIRMATIVE ACTION

§133-40-1. General.

1.1. Scope. -- This rule establishes equal opportunity and affirmative action policy.

1.2. Authority. -- West Virginia Code §18B-1-6 and §18B-1B-5.

1.3. Filing Date. -- ~~October 8, 2013.~~

1.4. Effective Date. -- ~~November 7, 2013.~~

1.5. Repeal of Former Rule. -- Repeals and replaces Title 133, Series 40 which had an effective date of November 7, 2013.

§133-40-2. General Policy.

2.1. It shall be the policy of the West Virginia Higher Education Policy Commission (Commission) ~~and the West Virginia Council for Community and Technical College Education (Council)~~ to provide equal employment opportunities to all qualified employees and applicants and to prohibit discrimination or harassment against any such individuals on the basis of protected characteristics. The Commission ~~and Council~~ considers race, color, religion, sex/gender, national origin, ancestry, age, blindness, disability, pregnancy, genetic information, sexual orientation, gender identity, ~~and~~ veteran or military status or other category that is protected under federal, State, or local anti-discrimination laws as protected characteristics and will not permit discrimination or harassment against any employee or applicant for employment on the basis of any such characteristic. The Commission ~~and Council~~ will conform both to the letter and the spirit of the law and regulations with respect to prohibiting any such discrimination or harassment and will ~~engage in~~ encourage and support voluntary affirmative action where necessary to ensure that institutions employ, advance in employment and treat all qualified persons without discrimination in any employment practices.

2.2. The scope of this policy prohibiting discrimination and harassment extends, but is not limited to, the following: recruitment, employment, promotion, transfer, training, working conditions, wage and salary administration, benefits, discipline, promotion, transfer, layoff, termination processes, and the application of all other employment-related policies. These principles of non-discrimination and anti-harassment also apply to ~~business relationships of the Commission and Council, such as the selection and treatment of independent contractors and the selection and treatment of independent contractors,~~ personnel working on Commission and/or Council premises, and any other persons or firms doing business with the Commission.

2.3. Under the Commission's ~~and Council's~~ additional authority to allocate specified functions and responsibilities among the institutions within the jurisdiction of the Commission ~~and Council~~, each institution shall accept primary and long-term responsibility for the development and implementation of equal employment opportunity and where necessary, affirmative action policies consistent with the Commission's ~~and Council's~~ guidance and all applicable State and federal laws and regulations.

2.4. Each institution and the Commission ~~and Council~~ shall take the initiative in developing or modifying ~~its~~ their own plans to achieve compliance with the equal employment opportunity and affirmative action ~~policies~~ policy of the Commission ~~and Council~~ as well as those of the ~~s~~State and federal governments. The president of each institution shall, through appropriate means, establish and maintain a positive program of equal employment opportunity and affirmative action within her/his jurisdiction in accordance with all laws and regulations applicable to the institution. The equal employment opportunity and affirmative action goals of the institution must be integrated into and consistent with other performance goals of the institution. The realistic goals and timetables of each institution shall be vigorously pursued to achieve a proportional representation of minorities and women in the workforce based on availability within the relevant workforce recruitment markets. The effective pursuit of affirmative action requires not only the adoption of an adequate plan, but also results-oriented procedures designed to ensure the involvement of managers at all levels of each institution. ~~Institutional affirmative action plans shall be submitted to the Chancellors by July 1 of each year.~~

~~2.5. The Chancellors shall appoint an equal employment opportunity/affirmative action advisory council, to be known as the Chancellors' Equal Employment Opportunity Council, composed of at least one representative from each of the campuses or institutions. The Council will help to facilitate the achievement of equal employment opportunity/affirmative action goals and compliance across the institutions under the Commission's and Council's jurisdiction. Under the general direction of the Chancellors, the Council shall be responsible for, but not necessarily limited to, the following duties and responsibilities:~~

~~2.5.1. Conducting periodic reviews of institutional equal employment opportunity/affirmative action plans and programs, while providing any assistance that may be required to improve programs and realize objectives.~~

~~2.5.2. Consulting from time to time with the Chancellors and presidents of institutions and/or their designees on equal employment opportunity/affirmative action matters.~~

~~2.5.3. Reviewing copies of equal employment opportunity reports of all institutions submitted to federal authorities responsible for enforcement of laws and regulations and providing consultation to the Chancellor where appropriate or as requested.~~

~~2.5.4. Helping to assure that current information affecting equal employment opportunity/affirmative action is disseminated to institutions and their employees.~~

~~2.5.5. Conducting other advisory assignments as directed by the Chancellors.~~