



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

10/31/2019 3:30 PM

Office of West Virginia  
Secretary Of State

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**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL  
RULE**

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

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

December 1, 2019

**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 31, 2019.

1.4. Effective Date. -- December 1, 2019.

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) 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 considers race, color, religion, sex/gender, national origin, ancestry, age, blindness, disability, pregnancy, genetic information, sexual orientation, gender identity, 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 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 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 the selection and treatment of independent contractors, personnel working on Commission premises, and any other persons or firms doing business with the Commission.

2.3. Under the Commission's additional authority to allocate specified functions and responsibilities among the institutions within the jurisdiction of the Commission, 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 guidance and all applicable laws and regulations.

2.4. Each institution and the Commission shall take the initiative in developing or modifying their own plans to achieve compliance with the equal employment opportunity and affirmative action policy of the Commission as well as those of the 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.