

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

July 3, 1991 *je*

NOTICE OF AN EMERGENCY RULE

AGENCY: STATE COLLEGE SYSTEM OF WV BOARD OF DIRECTORS TITLE NUMBER: 131

CITE AUTHORITY: West Virginia Code 18B-1-6, 18B-1-8(15), 18B-1-8(16)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 59

TITLE OF RULE BEING AMENDED Presidential Appointments,
Responsibilities and Evaluation

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Establishes guidelines for presidential appointments, responsibilities, and evaluations. Revisions to the current policy address the presidential evaluation procedure, annual review, and resignation and termination policy.

Use Additional Sheets If Necessary.

John R. ...
Signature

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Filing Date

Form #3A

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

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

CITE AUTHORITY: West Virginia Code 18B-1-6, 18B-1-8(15), 18B-1-8(16)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 59

TITLE OF RULE BEING AMENDED: Presidential Appointments,

Responsibilities and Evaluation

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

TITLE OF RULE BEING PROPOSED: _____

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.



Signature

TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
POLICY BULLETIN NUMBER 59

TITLE: POLICY REGARDING PRESIDENTIAL APPOINTMENTS,
RESPONSIBILITIES, AND EVALUATION

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**STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
POLICY BULLETIN NUMBER 59**

Policy Bulletin Number 59 establishes guidelines for presidential appointments, responsibilities, and evaluations. Revisions to the current policy address the presidential evaluation procedure, annual review, and resignation and termination policy. The Board adopted revisions to PB 59 also add a professional leave section, and renames and revises the Regents' Professorship.

TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF
WEST VIRGINIA BOARD OF DIRECTORS
SERIES 59
POLICY BULLETIN NO. 59

TITLE: POLICY REGARDING PRESIDENTIAL APPOINTMENTS,
RESPONSIBILITIES, and EVALUATION

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes policy on presidential appointments, responsibilities, and evaluation.
- 1.2 Authority - West Virginia Code 18B-1-6, 18B-1-8(15), 18B-1-8(16), and 18B-6-1(f)
- 1.3 Filing Date - July 3, 1991
- 1.4 Emergency Rule Effective Date - July 4, 1991
- 1.5 Repeal of Former Rule - Revises and Replaces Policy Bulletin Number 59, effective January 8, 1985.

SECTION 2. APPOINTMENT

- 2.1 ~~The president of each college and university under the governance of the West Virginia Board of Regents in the State College System is appointed by the Board State College System Board of Directors, consistent with the provisions of section nine, article twenty-six, chapter eighteen of the West Virginia Code West Virginia Code 18B-1-8(15) and 18B-6-1(f) and of the Board's Presidential Search and Selection Procedures.~~
- 2.2 The president of each college and university serves at the will and pleasure of the board Board of Regents.
- 2.3 ~~The salary of a president is set by the Board of Regents, and, with prior approval of the board, may be supplemented from nonstate sources. The board establishes procedures for calculating presidential salaries. It is the responsibility of the chancellor to calculate each president's salary within the specifications of these procedures.~~

- 2.4 ~~A president may be awarded academic rank, consistent with institutional policies and procedures. Upon appointment, a president may be awarded academic rank and tenure by the board.~~
- 2.5 ~~A president appointed subsequent to the effective date of this rule may serve a maximum of ten (10) years as president of a particular institution, but shall not be recommended for appointment to a sixth year prior to the completion of the performance evaluation described in Section 4 of these rules below. When the board determines that an appointment beyond the tenth year at a particular institution would be in the best interest of the institution and of the state system of higher education, it may, upon recommendation of the chancellor, extend the service of a president on an annual basis.~~
- 2.6 ~~Upon completion of at least five (5) years of satisfactory service, a president shall become eligible for consideration for appointment as a Regents' Professor (as provided in Section 6 of these rules below). Presidents who began service prior to the effective date of this rule also shall be eligible for that consideration.~~

SECTION 3. DUTIES AND RESPONSIBILITIES

- 3.1 ~~The president of each college and university under the governance of the West Virginia Board of Regents in the State College System is responsible to it the board through the chancellor. Within the policies and regulations of the board and of other state and federal authorities and under the direction of the chancellor, the president, as chief administrative executive officer, has general authority and responsibility for the institution and for keeping the chancellor informed regarding the institution in a timely and appropriate manner.~~
- 3.2 ~~A president is expected to demonstrate those leadership skills necessary for the vibrant, dynamic pursuit of the goals and objectives embodied in the mission of the institution. The president is also expected to understand the higher education needs of the institution's service region, work with the board Board of Regents and chancellor to develop proposals for meeting those needs, and provide leadership to foster cooperation between campus and community in fulfilling the institution's teaching, research, and public service responsibilities.~~
- 3.3 ~~The president is expected to consult appropriately with faculty, students, classified staff and administrators in discharging the responsibilities of the office. The president is also expected to ensure that the policies,~~

procedures and actions of the board ~~Board of Regents~~ are communicated to appropriate constituencies of the institution in a timely manner.

- 3.4 As the chief executive of the institution, the president is charged with the following specific responsibilities:
 - 3.4.1 Exercising effective leadership in a joint effort to implement the mission of the institution, as delineated in role and scope statements approved by the board ~~Board of Regents~~.
 - 3.4.2 Providing effective leadership and support for an academic program that is consistent with the institutional mission, the needs of those being served, sound standards of quality, and available resources.
 - 3.4.3 Providing effective leadership and support for a program of student life that complements the academic program and recognizes the diverse interests and needs of the student body.
 - 3.4.4 Developing a competent administrative organization and staff to ensure effective and efficient management of the institution.
 - 3.4.5 Maintaining lawful, equitable and efficient personnel programs, including appointment of qualified persons to the faculty and staff and promotion, retention or dismissal for cause of the same, with due regard for the best interests of higher education and the taxpayers of the State of West Virginia.
 - 3.4.6 ~~Recommending to the Board of Regents~~ In addition to any budget formula established by the board, recommending to the board annual operating and capital budgets and other plans, financial and otherwise, for realizing the institutional mission, and providing sound management of the approved budgets and plans.
 - 3.4.7 Under the coordination of the chancellor, communicating the needs of higher education to the governor, legislators, other state and local officials, and citizens of the state.
 - 3.4.8 Interacting with appropriate external bodies to achieve the mission of the institution in a manner consistent with board ~~Board of Regents~~ policy, statutory and regulatory provisions, and sound academic principles.

3.4.9 Undertaking assignments requested by the ~~board~~ Board of Regents and chancellor.

3.5 With regard to ~~(e)~~ 3.4.5 above, the president of each college and university under the governance of the ~~West Virginia Board of Regents in the State College System~~ has final institutional-level authority and responsibility for every personnel action at his or her institution the institution, with the exception of decisions relating ~~(1)~~ to his or her own employment and compensation; and ~~(2)~~ to appointments to boards, when such appointments are reserved to the ~~Board of Regents State College System Board of Directors.~~

3.6 Each president is expected to consult appropriately within the campus community on personnel decisions, but shall retain ultimate authority for such decisions.

SECTION 4. PRESIDENTIAL EVALUATION

4.1 Consistent with the requirements of subsection fourteen, section eight, article twenty-six, chapter eighteen of the ~~West Virginia Code ("Conduct performance evaluations of institution presidents in every fourth year of their employment as president, recognizing unique characteristics of their institutions and utilizing institutional personnel, institutional boards of advisors, board staff and persons knowledgeable in higher education matters who are not otherwise employed by the board")~~. West Virginia Code 18B-1-8-(16), the process described below is designed to evaluate presidential performance in relation to criteria established by the board. ~~West Virginia Board of Regents~~. It seeks to identify both areas of strength and those in which improvement would appear to be appropriate in order to assist each president in improving his or her effectiveness.

4.2 The basis for assessing presidential performance shall be the "Duties and Responsibilities" ~~of the President" (Section 3 of these rules above)~~ adopted by the Board of Regents listed in Section 3.4 of this document. This performance evaluation shall be conducted every fourth year and shall ~~utilize institutional personnel, institutional boards of advisors, Board of Regents' personnel, and persons knowledgeable in higher education matters who are not otherwise employed by the board.~~ be structured as follows:

4.2.1 The chancellor, after consultation with the president, shall establish a schedule for the performance evaluation activities.

In no case shall the process exceed four (4) months. The on-site schedule shall be developed for a period during the regular academic year when the institution is in operation. However, preparatory activities may be completed during the summer months.

- 4.2.2 The president shall prepare and submit to the chancellor at least ~~six (6)~~ four weeks prior to the on-site visit a "Statement of Presidential Assessment" consisting of his/her assessment of his/her performance as president in relation to each of the "Duties and Responsibilities of the President". The statement shall be no longer than ~~twenty (20)~~ fifteen pages. The president may ~~decide to~~ append necessary and appropriate materials, including such documents as the president's annual report and the current North Central Association self-study report.
- 4.2.3 ~~The chancellor shall form a visiting team of three (3) individuals. Two (2) shall be college or university presidents; or comparably experienced peers selected by the chancellor after reviewing with the president the list of those considered. Such persons shall be from outside West Virginia and be free from conflict of interest. The third person shall be a public (appointed by the governor) member of the West Virginia Board of Regents. A member of the board staff will serve as staff to the visiting team. A campus visit shall be conducted by a three-member team. One member shall be a public (appointed by the governor) member of the board appointed by the board chair. Following consultation with the president to be evaluated, and with the approval of the board chair, the chancellor shall appoint the other two team members. At least one of the chancellor's appointees shall be a present or former college or university president from outside West Virginia and free from conflict of interest. If there is objection by the president to be evaluated by any appointee proposed by the chancellor, such objection shall be conveyed to the board chair by the chancellor at the time the names of appointees are submitted for approval. The chancellor shall also appoint a staff member from the chancellor's office or the Central Office for the State College and University Systems to serve as staff for the visiting team.~~
- 4.2.4 ~~The chancellor shall appoint one (1) member of the visiting team to serve as chairperson. The team shall be given the "Statement of Presidential Assessment" and such other documents deemed to be appropriate by the chancellor.~~

- 4.2.5 ~~The chairperson of the visiting team shall make a visit to the campus at least four (4) weeks prior to the team visit to determine a schedule, including interviews and meetings with campus personnel which will assure a careful assessment of leadership and condition of the campus. The chancellor shall be responsible for arranging a schedule for the visiting team including interviews and meetings with campus personnel, that will assure a careful assessment of leadership and condition of the campus.~~
- 4.2.6 To obtain an accurate and objective impression of the performance of the president, the team shall visit the campus for up to two (2) days to talk with and receive the views of the president, institutional board of advisors, and a representative number of administrators, faculty members, classified employees, and students, alumni, and community leaders, including the elected leaders of each campus constituent group. Evaluative information thus obtained, either in oral or written form, if included in the report, must be attributable. This would not preclude the use of survey procedures for constituent input if such information is attributable. Opportunities for any student, faculty or staff member, administrator, alumnus, or other interested individual to provide input to the visiting team shall also be made available during the campus visit. Confidentiality beyond the visiting team of individual assessments of presidential performance shall be assured.
- 4.2.7 ~~The team chairperson shall be responsible for drafting and submitting a team report to the chancellor within thirty (30) days of the on-site visit. The general approach and format for the report shall be similar to, but not identical with, a North Central team visit and report, including commentary on the performance of the president in relation to each of the "Duties and Responsibilities of the President" adopted by the Board of Regents. There shall be an oral report by the visiting team to the president prior to leaving the campus. At the conclusion of the campus visit, the team shall provide a verbal report to the president. The chancellor shall join the president at this session to hear the report of the visiting team and any comments that the president wishes to make.~~
- 4.2.8 ~~The chancellor shall forward a copy of the report to the president of the Board of Regents, the immediate past president and to members of the Personnel Committee of the Board of Regents and to the president who was evaluated, inviting the~~

~~letter to offer comments within two (2) weeks. In executive session at the board's next meeting, the chancellor and the board member who served on the visiting team shall provide a verbal summary of the comments made by the visiting team and the president. The president shall be present in the executive session for this report to the board.~~

~~(i) A copy of comments received from the president shall be forwarded to the president of the Board of Regents, the immediate past president and to members of the Personnel Committee of the Board of Regents.~~

~~(j) The president shall be invited to discuss the process and results of the evaluation with the president of the Board of Regents, the immediate past president, the chancellor and the Personnel Committee of the Board of Regents, during which discussion areas of strength and those appearing to need improvement (if any) shall be identified for particular attention by the president prior to the next evaluation.~~

4.2.9 ~~Following its review of the evaluation with the president, the personnel committee shall report its conclusions to the Board of Regents. At all stages of the evaluation process, the president shall be involved and informed and be afforded an opportunity to respond as he/she deems appropriate. Confidentiality consistent with state laws shall be maintained throughout the evaluation process.~~

SECTION 5. ANNUAL REVIEW

~~5.1 Annual review is a process designed to identify and assess, on a yearly basis, presidential goals and objectives, with a focus on continuous growth and self-assessment. Prior to the beginning of the fiscal year, each president shall prepare an agenda of goals and objectives for the ensuing twelve (12) months. These goals and objectives, as well as progress on the goals and objectives of the previous year, shall be the focus of the Annual Review by the chancellor and president at the end of the fiscal year. A written summary of the Annual Review shall be shared with the Board of Regents. These summaries shall be shared with the board as a part of the Performance Evaluation conducted every fourth year. The president shall meet with the board in executive session as part of the annual review. At this meeting, institutional and presidential goals will be discussed. It is the responsibility of the chancellor to continually monitor and evaluate the performance of each president through campus visits, discussions with each president, assessment of the quality of written information submitted by each institution to the chancellor, assessment of the accomplishment of institutional and system goals, and discussions with members of~~

the board, as well as with members of institutional boards of advisors, students, faculty, staff, other administrators, legislators, and business and civic leaders associated with the institution. In addition each president shall provide to the chancellor at the beginning of each fiscal year the president's goals and objectives for the ensuing twelve months and the progress made on accomplishing the goals and objectives of the previous twelve months. The chancellor is responsible for informing the board of any concerns regarding the performance of any president in the State College System.

SECTION 6. Regents' professorships MOUNTAIN STATE PROFESSORSHIPS

6.1 Eligibility - To ensure that the institution and the ~~state system of higher education State College System~~ as a whole may continue to profit from the president's accumulated experience and insight, a Regents' professorship Mountain State Professorship may be awarded by the board to a president who has served at least five ~~(5)~~ years as a president of an institution ~~under the governance of the West Virginia Board of Regents in the State College System~~ and has been recommended by the chancellor. The terms and conditions of appointments of Regents Professors Mountain State Professors shall be the same as for all other tenured full professors, consistent with ~~Board of Regents Series 36 board policy, except that the length of appointment as a Mountain State Professor shall be limited to no more than five years. If a Regents' Professor requests temporary assignment to another institution he or she may request leave from the home institution and, if approved by the president of the receiving institution, may be reassigned in accordance with established board policy. The teaching load for a Mountain State Professor shall be the same as normally expected for other full time faculty members in that academic department at that institution. The board shall assign the Mountain State Professor to an institution in the State College System designated by the board and shall provide to that institution sufficient funds from HERF or other available funds to cover the salary and benefit cost.~~

6.2 Salary and Perquisites:

6.2.1 The salary of the Regents' Mountain State Professorship shall be established by the board upon recommendation of the chancellor. It shall not be less than eighty percent ~~(80%)~~ of the state-funded salary (excluding housing and automobile allowances for presidents who receive such allowances) received during the last year prior to appointment as a Regents' Mountain State Professor, ~~appropriately prorated to length of appointments, but not less than the average of the state salaries of the two (2) highest paid full professors in his or her~~

~~discipline. The salary of a Regents' Mountain State Professor may be supplemented from non-state sources, with prior approval of the Board. Board of Regents.~~

- 6.2.2 For purposes of preparing for his or her duties as a Regents' Mountain State Professor, said professor shall be eligible for "Special Status" during the first six (6) months of the appointment a six month paid sabbatical leave at a salary approved by the board.

SECTION 7. PROFESSIONAL LEAVE

- 7.1 College presidents need an opportunity to engage in professional renewal activities from time to time in order to maintain enthusiasm and effectiveness in the role of institutional chief executive officers. In recognition of this, presidents of the State College System institutions shall be eligible after each five year period of service as a president in the system to take a leave of absence at full pay for up to three months for purposes of professional renewal.
- 7.2 The leave must be taken within the first three years after either the five-year anniversary date as president or the effective date of this policy.
- 7.3 The dates of the leave, the professional renewal activity to be pursued during the leave, and the appointment of an acting president shall be approved in advance by the Executive Committee of the Board.
- 7.4 The professional renewal activity shall be directly related to the president's academic discipline or to the administration of higher education. A written report of the experience shall be provided by the president to the chancellor at the conclusion of the leave, and copies shall be provided by the chancellor to the board.

SECTION 8. RESIGNATIONS AND TERMINATIONS

- 8.1 A president may resign his or her appointment at any time upon written notification to the chancellor board, addressed to the chancellor and board chair.
- 8.2 The board Board of Regents may terminate an appointment as president at any time when, in the board's judgment, such action would be in the best interest of the institution at which the president serves and of state system of higher education the State College System. If a president has

~~completed at least five (5) years as president at a time of resignation or termination, he or she may request "Special Status" for a period of up to a maximum of six (6) months, during which time the duties of the former president would be assigned by the board upon recommendation of the chancellor. During this period, salary may continue at the former level, and any accrued annual leave must be amortized.~~

8.2.1 If the board terminates for any reason other than for "cause" the employment of a president who has academic tenure, that individual shall be eligible to assume a tenured faculty position at the institution at an initial salary set by the board and at the academic rank established upon, or subsequent to, appointment as president. "Cause" is defined to include acts of malfeasance or misfeasance, and may include acts of commission or omission, or acts in contravention of the policies or direction of the board and its designees.

8.2.2 If the board terminates for any reason other than for "cause" the employment of a president who does not have academic tenure and who has been a president in the State College System for fewer than five years, the individual shall be eligible to be appointed by the board as a full-time adjunct faculty member at an institution in the State College System designated by the board. The appointment shall be effective from the date of the release until the first day of the first academic semester (at the designated institution) following the one-year anniversary of the date of termination. The salary shall be set by the board.

8.2.3 If the board terminates for any reason other than for "cause" the employment of a president who does not have academic tenure and who has been a president in the State College System for five or more years, that individual shall be eligible for an appointment by the board as a Mountain State Professor.

SECTION 9. GRIEVANCE PROCEDURE

9.1 If the president of an institution ~~under the governance of the Board of Regents in the State College System~~ senses a problem with the chancellor or members of the board, the president should first attempt to ~~resolve~~ solve it through a discussion with the chancellor. If the problem seems to persist, the next appropriate step would be discussion of the problem with the ~~president of the board~~ chair. As the final step in this process the aggrieved president may request a meeting with the entire board ~~(or its Executive Committee)~~ to discuss the matter.

FISCAL NOTE

As filed, PB 59 appears to have no fiscal impact upon the State College System.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Policy Regarding Presidential Appointments, Responsibilities and Evaluation

Type of Rule: Legislative Interpretive Procedural

Agency State College System of WV Board of Directors 1018 Kan. Blvd., E. Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

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: June 12, 1991

Signature of Agency Head or Authorized Representative

John B. ...

DATE: July 2, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State College System of West Virginia Board of Directors

EMERGENCY RULE TITLE: Presidential Appointments, Responsibilities,
and Evaluation

1. Date of filing: June 26, 1991

2. Statutory authority for promulgating the emergency rule:
West Virginia Code 18B-1-6, 18B-1-8(15), 18B-1-8(16)

3. Date of filing of proposed legislative rule: June 26, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

Repeals

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare

Establishes guidelines for presidential appointments,

responsibilities, and evaluation. Revisions to the current

policy address the presidential evaluation procedure, annual

review and resignation and termination policy. The adopted

revisions also add a professional leave section, and renames and

revises the Regents' Professorship.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Establishes guidelines for presidential appointments, responsibilities, and evaluations. Revisions to the current policy address the presidential evaluation procedure, annual review, and resignation and leave section, and renames and revises the Regents' Professorship.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

July 8, 1991

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 8, 1991
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

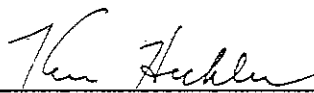
AGENCY: State College System of WV Board of Directors

RULE: Amendments, Series 59, Presidential Appointments,
Responsibilities and Evaluations

DATE RULE FILED AS AN EMERGENCY RULE: July 3, 1991

DECISION NO. 54-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA
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(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 54-91)

AGENCY: State College System of WV Board of Directors
RULE: Amendments, Series 59, Presidential Appointments
Responsibilities and Evaluation

FILED AS AN EMERGENCY RULE: July 3, 1991

- par. 1 The State College System of WV Board of Directors (Directors) has filed the above amendments to an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Directors filed this emergency rule with supporting documents with the Secretary of State July 3, 1991 and with the LOSCEA July 3, 1991.

par. 7 It is the determination of the Secretary of State that the Directors has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §18B-1-6 reads:

The university of West Virginia board of trustees and the board of directors of the state college system are hereby empowered to promulgate, adopt, amend or repeal rules, subject to the approval of the secretary of education and arts in accordance with §29A-3A-1 et seq. of this code, as they may deem necessary and convenient to ensure the full implementation of their powers and duties. Each governing board shall file a copy of any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article with the legislative over-sight commission on education accountability created in §29A-3a of this code.

par. 9 It is the determination of the Secretary of State that the Directors has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

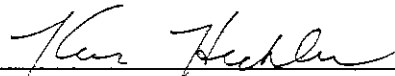
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Directors are as follows:

Establishes guidelines for presidential appointments, responsibilities and evaluations. Revisions to the current policy address the presidential evaluation procedure, annual review and resignation and termination policy.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest".

par. 14 This decision shall be cited as Emergency Rule Decision 54-91 or ERD 54-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State College System of WV Board of Directors, the Attorney General and the Legislative Over-sight Commission on Education Accountability.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION