

POLICY BULLETIN NUMBER 65

Policy Bulletin Number 65 establishes the procedure for promulgation of new rules, and amendment of existing rules in compliance with the West Virginia Administrative Procedures Act.

TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 65
POLICY BULLETIN NO. 65

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TITLE 131
PROCEDURAL RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
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TITLE: POLICY REGARDING PROMULGATION OR AMENDMENT OF RULES;
ADMINISTRATIVE PROCEDURES ACT

Section 1. General

- 1.1 Scope - This rule establishes the procedure for promulgation of new rules, and amendment of existing rules, in compliance with the West Virginia Administrative Procedures Act.
- 1.2 Authority - WV Code 18B-1-6, 29A-3A-4
- 1.3 Filing Date - To be assigned
- 1.4 Effective Date - To be assigned

Section 2. Definitions

- 2.1 "Board" means the State College System of West Virginia Board of Directors.
- 2.2 "Interpretive Rule" means every rule adopted by the board independently of any delegation of legislative power which is intended by the board to provide information or guidance to the public regarding the board's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the board to be determinative of any issue affecting private rights, privileges or interests.
- 2.3 "Legislative Rule" means every rule, which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. A legislative rule does not include (A) findings or determinations of fact made or reported by the board, including any such findings and determinations as are required to be made as a condition

precedent to proposal of a rule to the legislature; or (B) declaratory rulings issued by the board.

- 2.4 "Procedural Rule" means every rule which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency.
- 2.5 "Proposed Rule" means a rule which the board committee has approved for a public notice and public comment period, and which rule is not yet legally effective.
- 2.6 "Rule" means and includes every regulation, standard or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, affecting private rights, privileges or interests, or the procedures available to the public, adopted by an agency to implement, extend, apply, interpret or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations relating solely to the internal management of the agency, nor regulations of which notice is customarily given to the public by markers or signs, nor mere instructions.

Section 3. Promulgation or Amendment of Rules, Generally

- 3.1 Authority to Promulgate - The chair of the board shall refer each prospective rule to such committee of the board as the chair deems appropriate. Upon referral, the committee shall advise the chancellor of action, if any, which the committee finds appropriate.

Authority to promulgate a proposed rule or a proposed amendment to an existing rule shall be exercised on the direction of the committee of the board to which the chair has referred the prospective rule.

- 3.2 Requests for Action on Rules - Any interested person may submit proposals for amendments or new rules, by submitting a draft of the proposal to the chancellor. The chancellor shall then take such action as is merited, in his/her discretion. Any proposal for a modification to an existing rule should be submitted to the chancellor with old and new language indicated.

Section 4. Promulgation or Amendment of Procedural or Interpretive Rules

- 4.1 Submission of rules to Secretary - Every proposed procedural or interpretative rule shall be submitted by the chancellor to the Secretary of Education and the Arts, for approval.
- 4.2 State Register - Upon approval by the secretary, the chancellor shall file in the State Register every proposed procedural or interpretive rule. The filing

shall include a notice of the action proposed and shall include the text of the proposed rule.

- 4.3 Fiscal Note - Every proposed rule submitted for the State Register shall include a fiscal note. The fiscal note shall state the objectives of the proposed rule and shall meet all requirements of the rules of each house of the legislature as to components of fiscal notes. The fiscal note shall include a statement of the economic impact of the rule on the state.
- 4.4 Notice of Rule Making - Every notice of rule making submitted to the State Register shall contain the following:
 - 4.4.1 The date, time, and place for a public hearing or for a public comment period.
 - 4.4.2 A precise statement of whether oral presentations will be permitted at any public hearing, if any, or whether all presentations must be in writing.
 - 4.4.3 Unless otherwise approved by the chair of the board, oral presentations shall be limited to a maximum of fifteen minutes for advocates and fifteen minutes for opponents of the proposed rule. Unless otherwise approved by the chair of the board, each written presentation shall be limited to a maximum of ten pages of textual discussion of the merits of the proposed rule.
 - 4.4.4 The time, date, and place set forth in the notice shall be (unless a public hearing is continued beyond that date) the last opportunity to submit written material. The notice shall include an alternative address for submission of written material prior to the public hearing.
 - 4.4.5 If findings or determinations are a condition precedent to the final promulgation of a rule, the notice shall separately identify a date, time and place for the taking of evidence. The public comment period shall follow with sufficient time for the board to, in the interval, make such findings as are required. Any such findings shall state fully and succinctly the reasons therefore and shall be filed by the chancellor in the State Register. A public comment period shall be provided thereafter.
 - 4.4.6 The notice of hearing and public comment shall be filed in the State Register not less than thirty nor more than sixty days prior to the evidentiary hearing date, if applicable, or the closing date for public comment.

- 4.5 Public Record - The statement of reasons for any findings and the transcript of the public comments and evidence shall be carefully retained by the chancellor, for public inspection, for a minimum of five years.
- 4.6 Adoption by Board - Within six months of the close of all evidence and comment, the board shall act on the adoption of a proposed rule. A notice of withdrawal or adoption shall thereafter be filed by the chancellor in the State Register. Amendments of proposed rules following a comment period shall be at the discretion of the board, and no further comment period shall be available, but any rule so amended by the board shall require submission to and approval of the secretary prior to filing a notice of adoption. The chancellor shall make such adjustments to the fiscal note as modifications to the rule may require. Each rule adopted by the board shall be filed, together with the notice of adoption, in the State Register.
- 4.7 Withdrawal of Proposed Rule - The chancellor shall be authorized to withdraw any proposed rule at any time prior to a vote of adoption of the proposed rule by the board, if in the chancellor's discretion and judgment circumstances mandate such action. Such withdrawal shall be filed in the State Register. This authority shall only be limited by the prevailing provisions of the Administrative Procedures Act.

Section 5. Promulgation of Legislative Rules

- 5.1 Preliminary Filings and Notice of Proposed Rules. - In promulgating a proposed Legislative Rule, the chancellor shall conform with the requirements of 4.1 - 4.4.
- 5.2 Approval by Board - Within six months of the close of all evidence and comment, the board shall act on the approval of a proposed rule. A notice of withdrawal or approval shall thereafter be filed by the chancellor in the State Register. Amendments of proposed rules following a comment period shall be at the discretion of the board, and no further comment period shall be available, but any rule so amended by the board shall require submission to an approval of the secretary prior to filing a notice of approval. The chancellor shall make such adjustments to the fiscal note as modifications to the rule may require. The notice of approval, and the text of the rule, shall be filed within the State Register. Fifteen copies of the notice and rule shall be filed with the Legislative Oversight Commission on Education Accountability.
- 5.3 Oversight Commission - Submissions to the Legislative Oversight Commission on Education Accountability shall include:
 - 5.3.1 strike-through and underlining of new language in modifications to existing rules;

- 5.3.2 a summary of the rule and copies of any collateral rules which will be thereby modified or repealed;
 - 5.3.3 a statement of why the rule is needed;
 - 5.3.4 a fiscal note as required in 4.3.
- 5.4 Action of the Legislative Oversight Commission on Education Accountability - The chancellor shall be authorized to receive the notice of action by the Legislative Oversight Commission on Education Accountability. The chancellor shall bring recommendations for modification before the board at the board's next meeting. Modification of a proposed rule must precede the commission's submission of the rule to the legislature. No further public comment period shall be provided, except as directed by the board.
- 5.5 Extraordinary Legislative Sessions - If a proposed legislative rule has been approved by the board and an extraordinary session of the legislature is convened prior to receipt of a notice of action from the Oversight Commission on Education Accountability, the chancellor may in his/her discretion deliver copies of the proposed rule to the ranking members of the Oversight Commission on Education Accountability for their consideration of prospective legislative approval during the extraordinary session.
- 5.6 Withdrawal of Proposed Rules - The chancellor shall be authorized to withdraw any proposed rule previously approved for submission to the legislature, if in the chancellor's discretion and judgment circumstances mandate a further review of the proposed rule by the board. Such withdrawal shall be filed in the State Register. This authority shall only be limited by the prevailing provisions of the Administrative Procedures Act.

Section 6. Emergency Rules

- 6.1 Filing of Emergency Rule - Upon a finding by the board that an emergency exists requiring promulgation of an emergency rule, and approval of the text of the emergency rule, the Emergency Rule and statement of facts and circumstances of emergency shall be filed by the chancellor in the State Register for immediate effect.
- 6.2 Oversight Commission - Fifteen copies of any Emergency Rule, and the statement of circumstances, shall be forthwith filed with the Legislative Oversight Commission on Education Accountability, such filing to be not more than one hundred eighty days following the filing in the State Register.

- 6.3 Notice of Hearing - Forthwith following the filing of an emergency rule in the State Register, and not more than sixty days thereafter in any event, the chancellor shall cause a notice of public hearing and comment, as required in 4.4 herein, in the State Register.
- 6.4 When Emergency Exists - An emergency exists, for purposes of this rule, if the promulgation of the rule is necessary for the immediate preservation of the public peace, health, safety or welfare, to prevent substantial harm to the public interest, or is necessary to comply with a time limitation established by federal or state law.

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FISCAL NOTE**

As filed, Policy Bulletin Number 65 does not appear to have any fiscal impact upon the State College System.