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(Plus all the volunteer
help we can get)

October 15, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE COLLEGE SYSTEM OF WEST VIRGINIA, BOARD OF DIRECTORS

RULE: NEW RULE, SERIES 66, HIGHER EDUCATION ADULT PART-TIME STUDENT GRANT PROGRAM (HEAPS)

DATE FILED AS AN EMERGENCY RULE: SEPTEMBER 31, 1999

DECISION NO. 16-99

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



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EMERGENCY RULE DECISION (ERD 16-99)

AGENCY: STATE COLLEGE SYSTEM OF WEST VIRGINIA, BOARD OF DIRECTORS

RULE: NEWRULE, SERIES 66, HIGHER EDUCATION ADULT PART-TIME STUDENT GRANT PROGRAM (HEAPS)

FILED AS AN EMERGENCY RULE: SEPTEMBER 31, 1999

- par. 1 The State College system of West Virginia, Board of Directors (Board) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a 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-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. 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 Board filed this emergency rule with supporting documents with the Secretary of State September 31, 1999.

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

par. 8 (B) Statutory Authority -- W. Va. Code §18C-5-7 reads in part:

(e) The governing boards shall propose a joint legislative rules pursuant to §29A-3A-1 et seq. to implement the provisions of this section which shall be filed with the legislative oversight commission on education accountability by September 1, 1999. The Legislature hereby declares that an emergency situation exists and, therefore, the governing boards jointly may establish by emergency rule, under the procedures of §29A-3a of this code, legislative rules to implement the provisions of this section, after approval by the legislative oversight commission on education accountability.

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

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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.

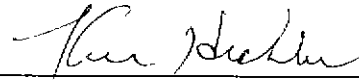
par. 12 The facts and circumstances as presented by the Board are as follows:

Through HB 2482, the Legislature declared that an emergency situation existed, and therefore, the governing boards were to jointly establish by emergency rule, legislative rules to implement the Higher Education Adult Part-time Student (HEAPS) Grant Program.

The Legislature has appropriated funds for student awards for FY 1999-2000. We believe awards cannot be made until the emergency rule is filed.

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(f). . . "time limitation" and "mandated by the Legislature."

par. 14 This decision shall be cited as Emergency Rule Decision 16-99 or ERD 16-99 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 West Virginia, Board of Directors, the Attorney General and the Legislative Oversight Commission on Education Accountability.



KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA
CIVIL RIGHTS DIVISION
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