



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-52  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes  
RULE NAME: 133-52 Annual Reauthorization of Degree-Granting Institutions

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Extension of Sunset Date. Rule establishes policy regarding annual reauthorization of degree-granting institutions which offer degrees above the associate level.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The West Virginia Higher Education Policy Commission has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers to West Virginia residents.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

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

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. 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  
LEGISLATIVE RULE  
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 52  
ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS

**§133-52-1. General.**

1.1. Scope. --This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees above the associate level.

1.2. Authority. --West Virginia Code §18B-4-7.

1.3. Filing Date. -- ~~July 5, 2017.~~

1.4. Effective Date. -- ~~August 5, 2017.~~

1.5. Sunset Date. --This rule shall terminate and have no further force or effect ~~upon the expiration of five years from its effective date~~ on.

**§133-52-2. Purpose.**

2.1. The West Virginia Higher Education Policy Commission (Commission), through a process of granting authorization and annual reauthorization of baccalaureate and graduate level higher education institutions operating in West Virginia, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers to West Virginia residents. An institution authorized by the Commission shall be required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.

2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.

2.3. The Commission is responsible for the authorization of any institution, association or organization external to or within the state which desires to offer programs or credit-bearing academic courses of higher learning in West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term "academy," "college," "institution," "university" or similar title, hereafter referred to as "institution."

2.4. The Commission is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs above the associate level except for those institutions exempted by the Commission under Section 4 of this rule. The process of conferring reauthorization by the Commission includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.

2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Commission on all items related to reauthorization prescribed in this rule.

2.6. While the provisions of this rule apply directly to the annual reauthorization of any private institution in West Virginia which offers degrees above the associate level, the criteria for annual reauthorization also apply to public higher education institutions that offer degrees above the associate level in the state, and are under the purview of the Commission with the exception of Marshall University and West Virginia University.

2.7. While exempt from annual reauthorization, Marshall University and West Virginia University shall provide information delineated in Section 5.4 to the Commission by November 1 of each year.

2.8. The Commission shall make available information on institutional performance of all public institutions located in West Virginia, including Marshall University and West Virginia University, on the Commission's website and through other appropriate venues.

**§133-52-3. Definitions.**

3.1. "Accreditation" means a status attained by the institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. Secretary of Education.

3.2. "Authorization" means the status attained by the institution that allows the institution to offer programs and courses within the State of West Virginia. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

3.3. "Commission" means the West Virginia Higher Education Policy Commission.

3.4. "Council" means the West Virginia Council for Community and Technical College Education.

3.5. "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.

3.6. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.

3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:

3.7.a. offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward a baccalaureate, masters, doctorate, or other specialized certification/degree designation above the baccalaureate level; or

3.7.b. operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

3.7.c. uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

3.8. “Physical presence” means an actual presence in the state, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational services; dissemination of educational credentials; enrollment, solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:

3.8.a. An instructional site within the state.

3.8.b. Dissemination of an educational credential from a location within the state.

3.8.c. An agent, whether compensated or not, who is utilized for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring institution.

3.8.d. Advertising, promotional material or public solicitation in any form that targets West Virginia residents through distribution or advertising in the state.

3.8.e. Instructional delivery that receives assistance from any other organization within the state in that delivery.

3.8.f. Clinical experiences, internships, or other similar curricular requirements.

Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Commission and local school districts.

3.9. “Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for West Virginia residents. This status is granted by the Commission when the institution demonstrates compliance with the requirements for such status.

3.10. “Religious, theological, or faith-based institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.

3.11. “Unearned tuition” means the anticipated amount of tuition revenue minus refunds that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia. “Unearned tuition” for the application of annual reauthorization is the amount of tuition revenue minus refunds that was received during the previous year.

**§133-52-4. Exemptions.**

4.1. Any institution fully authorized by the Commission to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization except as provided in 4.2.

4.2. The following institutions shall be exempt from the provisions of this rule:

4.2.a. Correspondence, business, occupational and trade schools which are regulated under West Virginia Code provisions §18B-2B-9, and West Virginia Council for Community and Technical College Education, Title 135, Legislative Rule, Series 35 on correspondence, business, occupational and trade schools.

4.2.b. Out-of-state institutions:

4.2.b.1. offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the state institution;

4.2.b.2. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, and is not for college credit;

4.2.b.3. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;

4.2.b.4. offering courses or programs at a location in West Virginia by the authority of the Commission for a designated period of time; or

4.2.b.5. offering online courses or programs with Commission approval for a specified period of time.

4.2.c. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.

4.2.d. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in Series 20, *Initial Authorization of Degree-Granting Institutions*, and offers no degree programs other than those specifically related to the institution's doctrine.

4.2.e. Those institutions subject to annual reauthorization by the West Virginia Council for Community and Technical College Education, under its Title 135, Series 52.

**§133-52-5. Annual Reauthorization.**

5.1. All authorized institutions, except those previously exempted in section 4.2 of this rule, must annually submit a reauthorization application report in a format prescribed by Commission staff. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.

5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.

5.3. Upon request by the Commission, authorized institutions must provide documentation necessary to assess the performance of the institution.

5.4. The reauthorization application must include the following:

5.4.a. Name and address of the institution of higher education.

5.4.b. Chief executive officer's name, title, address, phone number, fax number, and email address.

5.4.c. Institutional liaison's name, title, address, phone number, fax number, and email address.

5.4.d. Verification of current accreditation status and copy of latest annual HLC/NCA Institutional Update Report.

5.4.e. Full and part-time student enrollments of resident and non-resident students for each term during the most recent reporting year.

5.4.f. A current schedule of fees and charges for tuition.

5.4.g. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year.

5.4.h. Graduation rates for undergraduate degree-seeking first-time, full-time freshmen for the most recent graduating six-year cohort year.

5.4.i. Data on student transfers into and out of the institution for the most recent year.

5.4.j. Licensure pass rates for completion of all professional programs, e.g., education, nursing, and engineering, for the most recent year.

5.4.k. Student loan cohort default rates for the most recent year available.

5.4.l. Campus crime statistics for the most recent reporting year available.

5.4.m. Number of student, staff, and faculty grievances filed during the most recent reporting year.

5.4.n. Any additional information or data as deemed necessary.

5.5. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.

5.6. Upon receipt of the annual reauthorization application, Commission staff shall convene a compliance review committee to review the submitted documentation. The compliance review committee shall be composed of:

5.6.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for authorization.

5.6.b. Persons who are representative of both public and private institutions.

5.6.c. Members of the Commission staff. The Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee.

5.7. Upon review of documentation and recommendation of the compliance review committee, institutions that are found to be in compliance with generally accepted parameters of operation are recommended to the Commission for reauthorization.

5.8. If the compliance review committee finds, after review of required documentation, that the institution is not in compliance with generally accepted parameters of operation, the committee may request additional documentation for review.

5.9. Each institution shall provide, at the request of the compliance review committee, all information

the committee considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring degrees. Information may include but is not limited to the following:

5.9.a. Institutional information.

5.9.a.1. Copies of articles of incorporation, charter, constitution, and by-laws for the initial reporting year, and changes only for reporting in subsequent years.

5.9.a.2. Copy of any articulation agreement the institution has with a West Virginia higher education institution entered into or changed within the last year.

5.9.a.3. Copy of the institution's current mission and goals statement for the initial reporting year, and changes only for reporting in subsequent years.

5.9.a.4. Copy of the current institutional catalog.

5.9.a.5. Copies of current promotional and recruitment materials and advertisements provided or distributed to West Virginia residents.

5.9.b. Accreditation information.

5.9.b.1. If the institution is accredited by a regional accrediting agency, verification of the accreditation status, including any correspondence within the last year.

5.9.b.2. If the institution is accredited by a national accrediting agency or any of its academic programs are accredited by a program accrediting agency, verification of the accreditation status.

5.9.c. Program information.

5.9.c.1. A list of current degree programs offered in West Virginia by the institution.

5.9.c.2. Results of any external degree program evaluation during the last year, if any.

5.9.c.3. A list of any degree programs that have ceased to be offered during the previous year.

5.9.c.4. Identification of methods used to assess student achievement.

5.9.c.5. Results of the most recent assessment of student achievement.

5.9.d. Faculty information.

5.9.d.1. A list of current full-time and part-time faculty with highest degree held, degree field(s), and institution conferring highest degree.

5.9.e. Financial information.

5.9.e.1. The latest financial statement for the most recent fiscal year compiled or audited by an independent certified public accountant, including any management letters provided by the independent auditor.

5.9.f. Facilities information, if applicable.

5.9.f.1. Verification of compliance with all applicable local, state, and federal safety and fire codes.

5.9.g. Student information.

5.9.g.1. The institution's policies about student admissions, evaluation, suspension, and dismissal for the initial reporting year, and changes only for reporting in subsequent years.

5.9.g.2. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges.

5.9.g.3. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years.

5.9.g.4. The institution's policy about granting credit for experiential learning, including prior education, training, and experience for the initial reporting year, and changes only for reporting in subsequent years.

5.9.g.5. The institution's policy on post-graduation placement, if any, and data on placements for the most recent year.

5.9.g.6. A list of all student grievances for the most recent year as well as the nature and disposition of each.

5.9.h. Other information.

5.9.h.1. Information related to compliance with federal or state laws and regulations that require reporting to the public, students, employees or federal or state agencies.

5.9.h.2. Information on how the institution ensures accuracy in its usual publications such as the catalog and institutional brochures and fair representation by recruiters and agents.

5.9.i. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.

5.10. On-site review.

5.10.a. The compliance review committee, at its discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in Series 20, *Initial Authorization for Degree-Granting Institutions*. The committee may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data to the committee. The visit will be scheduled at a time which is mutually convenient to the institution and the committee. The institution shall pay the reasonable expenses associated with the compliance review visit.

5.10.b. Following review of submitted documentation and/or site visit, the compliance review committee will prepare an analysis of the findings.

5.10.c. A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institution may provide the Commission a

response to the report within ten (10) working days of receipt of the report. The institutional comments will be included with the compliance review committee report presented to the Commission.

5.10.d. The compliance review committee will develop a recommendation for the Commission regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended for reauthorization.

5.10.e. An institution which is not found to meet the generally accepted higher education state standards of quality will be recommended to the Commission for denial of reauthorization. Once reauthorization is denied, the institution is subject to the authorization requirements, process and review in Series 20, *Initial Authorization of Degree-Granting Institutions*, in order to seek authorization to operate within West Virginia.

5.10.f. An institution submitting an annual reauthorization report adjudged by the Commission as meeting the standards for reauthorization shall retain its authorized status for the current year.

#### **§133-52-6. Public Institutions and Annual Reauthorization.**

6.1. All public institutions, except Marshall University and West Virginia University, under the purview of the Commission shall apply for annual reauthorization and shall meet the conditions for reauthorization as provided in section 5 of this rule.

6.2. The Commission shall make available to the public information on matters of institutional performance for all public institutions under its purview, including Marshall University and West Virginia University, as provided in section 2 of this rule.

#### **§133-52-7. Dissemination of Institutional Information.**

7.1. The Commission shall make available to the public, information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Commission's website or disseminated through other appropriate venues.

7.2. The Commission office shall maintain a list of institutions authorized to grant degrees and shall make such list available to the public.

#### **§133-52-8. Change of Ownership and Control.**

8.1. Authorization of an institution terminates at the time when a change in ownership resulting in a change of control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within ten (10) business days after the change of ownership that resulted in a change of control. Such institution shall submit an application reflecting the change in ownership and control and a fee of \$500.

8.1.a. If an institution files an application requesting approval of a change of ownership and control more than ten (10) business days after the change of ownership resulting in a change of control takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in Series 20, *Initial Authorization for Degree-Granting Institutions*.

8.1.b. An authorized institution shall notify the Commission of any anticipated change in ownership that results in a change of control at least thirty (30) days prior to the change in ownership and control.

**§133-52-9. Reauthorization Fees.**

9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.

9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization, suspension, or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.

9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission. The Commission may adjust all fee charges as deemed necessary.

9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

**§133-52-10. Sanctions and Termination of State Authorization.**

## 10.1. Intermediate sanctions.

10.1.a. If an institution fails to comply with the provisions for reauthorization in this rule, the Commission may progressively impose one or more of the following sanctions.

10.1.a.1. Require the submission and implementation of an improvement plan to address or correct problems identified by the Commission.

10.1.a.2. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.

## 10.2. Termination of state authorization.

10.2.a. An institution shall provide the Commission with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) business days of receipt of such notice.

10.2.b. The Commission may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any other appropriate action per Series 20, *Initial Authorization of Degree-Granting Institutions*.

10.2.c. The Commission may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or submits an incomplete or unsatisfactory reauthorization application, as determined by Commission staff and referenced in Section 5 of this rule.

10.2.d. The Commission shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:

10.2.d.1. Failed to maintain the minimum standards for conferring degrees.

10.2.d.2. Refused or willingly failed to provide information to the Commission in a manner and within a reasonable timeframe as established by the Commission.

10.2.d.3. Willfully provided false, misleading or incomplete information to the Commission.

10.2.e. An institution authorized as a religious, theological or faith-based college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed within ten (10) business days. In the absence of a timely appeal, the termination shall be final.

10.3. Notification to cease offering degrees or degree credits.

10.3.a. Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.

**§133-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.**

11.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief executive officer shall notify the Commission of the date of discontinuance and the name and address of the agency where records will be maintained.

11.2. Records shall be permanently maintained and copies may be obtained by authorized parties. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.

11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Commission of the following:

11.3.a. the planned date of termination of postsecondary education operations;

11.3.b. the planned date for the transfer of student records;

11.3.c. confirmation of the name and address of the organization to receive and hold the student records; and

11.3.d. the official at the organization receiving the student records who is designated to provide official copies of records or transcripts upon request.

**§133-52-12. Notification: Appeals.**

12.1. Once the Commission has received and verified the accuracy of information constituting any of the grounds identified in section 10 of this rule, the Commission shall notify the institution and its owner in writing of its intent to recommend denial or suspension of reauthorization or other adverse action and the grounds for such recommendation.

12.1.a. The owner of the institution may, within ten (10) business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) business days of such request at the Chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the Chancellor.

12.1.b. The hearing shall be conducted by the Chancellor or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.

12.1.c. The Chancellor or his/her designee may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.

12.1.d. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor or his/her designee shall be deemed unchallenged by the institution and reported to the Commission for final action.

12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by clear and convincing evidence.

12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

12.4. The rules of privilege recognized by the law of this state shall be followed.

12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor or his/her designee; and, may cross-examine witnesses called by the Commission in support of the charges.

12.7. The hearing shall be open to the general public.

12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. All recorded materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

12.10. The Commission may call witnesses to testify in support of charges and may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of its position.

12.11. All parties shall have the right to offer opening and closing arguments.

12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.

12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10)

business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.

12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor or his/her designee.

12.15. At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:

12.15.a. To dispose of procedural requests, pre-hearing motions or similar matters;

12.15.b. To simplify or settle issues by consent of the parties; or,

12.15.c. To provide for the informal disposition of cases by stipulation or agreement.

12.16. The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.

12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

12.18. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code §29A-5-1(b).

12.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 12.18 of this rule must be received by the Commission no later than ten (10) business days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code §29A-5-1(b).

12.20. Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code §29A-5-3. Such orders shall be entered within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.

12.21. Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor or his/her designee and must be approved by a majority of the Commission by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or his or her attorney of record, if any, within ten (10) business days after entry by the Commission by personal service or by registered or certified mail.

12.22. The final order may suspend, withdraw or revoke the authorization of the institution; place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Commission, up to and including payment of loans, interest and other charges in connection with institution loans caused a student by the institution's violation of this rule.

12.23. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code §29A-5-1, et seq.

12.24. Any relief a student believes he or she was not rightfully awarded by the Commission pursuant

to this rule may be pursued in any other appropriate forum.