



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Community And Technical College Education TITLE-SERIES: 135-35
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Business, Occupational, and Trade Schools
CITE STATUTORY AUTHORITY: §18B-2B-9
COMMENTS LIMITED TO:
Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/09/2026 5:00 pm

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Chancellor Sarah Tucker
ADDRESS: WV Council for Community & Technical College Education
2001 Union Carbide Dr., Building 2000
EMAIL: tucker@wvctcs.edu

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Rule regarding the issuance, renewal, and revocation of permits to correspondence, business, occupational, and trade schools also known as proprietary institutions.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

§135-35-1 General. Changed references throughout from Business, Occupational, and Trade Schools to "Proprietary Institutions" to provide a more contemporary and consistent reference to the sector (note that Business, Occupational, and Trade Schools and Proprietary Institutions are used interchangeably in §18B-2B-9).

§135-35-2 Definitions. Terminology updated throughout; for example, "School" deleted and replaced with Proprietary Institution. Updated definition of financially sound. Also includes modernized language across multiple definitions.

§135-35-3 Exemptions, "School" replaced with "proprietary institution" consistently in this and proceeding sections. Eliminated section 3.1.g, given that nothing in §18B-2B-9 suggests that the statute or the associated rule apply only to for-profit entities (proprietary institutions can operate as not-for-profit organizations). Added West Virginia Higher Education Policy Commission to the former 3.1.h (now renumbered 3.1.7)

§135-35-4 Application for Permit. Added requirement for a closure contingency plan as a new condition of permit issuance to strengthen consumer protection (§4.3.8).

§135-35-5 Approval to Offer Degrees. Approval to offer associate degrees terminology updated for institutions wishing to start offering associate degrees. Added provision referencing Commission Series 20 for institutions seeking bachelor's level authorization.

§135-35-6 Permit Application Fee. Terminology updated. No fee changes.

§135-35-7 Surety Bond Requirements. Terminology updated throughout. Eliminated section 7.2 on reduced rate surety bonds for institutions with longer-term presence in the state since statute specifies the surety bond amount as between \$50,000 and \$100,000. Updated financial provisions language in section 7.8 upon the recommendation of the chief financial officer.

§135-35-8 Maintenance of Records. Significant change: student record retention updated from 50 years or until mid-60s to in perpetuity. Security measures expanded to include third-party electronic storage.

§135-35-9 Change of Institutional Ownership. Terminology updated. No substantive policy changes.

§135-35-10 Institutional Closing. Terminology updated. Added requirement to inform Council and students of plans for third-party transcript custodian storage.

§135-35-11 Student Enrollment Contract. Terminology updated. Accrediting agency reference broadened from "national or regional" to simply "an accrediting agency" recognized by the United States Department of Education in section 11.4.

§135-35-12 Cancellation and Refund Policies. Significant change: refund policy for non-accredited institutions updated to align with federal Return to Title IV (R2T4) regulations, replacing the prior tiered percentage schedule.

§135-35-13 Advertising and Marketing. Removed requirement to disclose home study status. Added prohibition

on asserting licensure eligibility without documented evidence from the appropriate licensing entity (§13.3.12).

§135-35-14 Student Complaints. Terminology updated. No substantive policy changes.

§135-35-15 Warning, Suspension, Withdrawal, or Revocation. Terminology updated throughout. Deleted sections 15.4.a to 15.4.d, which are redundant to the Administrative Procedures Act.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

NA

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

na

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
	0	0	0

Personal Services			
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Angela S Kerns -- 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 135
LEGISLATIVE RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
SERIES 35
CORRESPONDENCE, BUSINESS, OCCUPATIONAL, and TRADE SCHOOLS

§135-35-1. General.

1.1. Scope. -- Rule regarding the issuance, renewal, and revocation of permits to correspondence, business, occupational, and trade schools (also known as proprietary institutions).

1.2. Authority. -- W. Va Code §18B-2B-9.

1.3. Filing Date. -- ~~April 5, 2022~~.

1.4. Effective Date. -- ~~June 5, 2022~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon ~~June 5, 2027~~. August 1, 2032.

§135-35-2. Definitions.

2.1. ~~Accredited School~~ Proprietary Institution

A ~~school~~ proprietary institution that is accredited by an ~~regional or national~~ accrediting agency that is recognized by the United States Department of Education.

2.2. Associate Degree

A degree that may be awarded by accredited ~~schools~~ proprietary institutions pursuant to a program of not less than two (2) academic years and generally no fewer than 60 credits as authorized by ~~West Virginia~~ W. Va. Code §18B-2B-9.

2.3. ~~Council~~ Campus

~~The West Virginia Council for Community and Technical College Education. A permanent facility where instruction takes place, or a facility where courses are taught for more than ten (10) days per calendar year.~~

2.4. ~~Campus~~ Chancellor

~~A permanent facility where instruction takes place, or a facility where courses are taught for more than ten (10) days per calendar year.~~ The Chancellor of the West Virginia Council for Community and Technical College Education or his or her designee.

2.5. ~~Chancellor~~ Correspondence, Business, Occupational, or Trade School

~~The Chancellor of the West Virginia Council for Community and Technical College Education or his or her designee.~~ A proprietary institution.

2.6. ~~Financially Sound~~ Council

~~Meeting two of the following: a current ratio of at least 1:1 regarding total current assets compared to total current liabilities, positive total equity, or current year profitability.~~ The West Virginia Council for Community and Technical College Education.

2.7. ~~Immediate Family~~ Financially Sound

~~Spouse, parent, sibling, child, or grandchild.~~ Meeting two (2) of the following criteria, based on the proprietary institution's most recent audited annual financial statements covering a fiscal year end within the preceding twelve (12) months: (1) a current ratio of at least 1:0 (total current assets divided by total current liabilities); (2) positive total equity (total assets minus total liabilities) greater than \$0; or (3) positive change in net assets or net income for the most recently completed fiscal year.

2.8. ~~Ownership Change~~ Immediate Family

~~When the change of ownership results in a change in control of the school outside the immediate family.~~ Spouse, parent, sibling, child, or grandchild.

2.9. ~~Person~~ Ownership Change

~~Any individual, group of individuals, partnership, association, organization, business, trust, corporation, or other business entity.~~ When the change of ownership results in a change in control of the institution outside the immediate family.

2.10. ~~Business, Occupational, or Trade School~~ Person

~~An institution, organization, or entity no matter how titled, maintaining or conducting classes or instruction for a consideration, remuneration, or tuition, designed to prepare an individual for employment or enhance employment skills.~~ Any individual, group of individuals, partnership, association, organization, business, trust, corporation, or other business entity.

2.11. ~~Representative~~ Proprietary Institution

~~Any person representing a school, whether such school is located within or outside of the State of West Virginia, or acting as an agent, solicitor, procurer, broker, or independent contractor to produce students or enrollees for any such school by solicitation in any form at any place in this state.~~ An organization or other entity, no matter how titled, that maintains or conducts classes or instruction for consideration, remuneration, or tuition and designed to prepare an individual for employment or enhance employment skills. A proprietary institution starts out exclusively offering credentials below the associate degree, such as certificates and diplomas, but may, upon Council approval, offer associate degrees. For the purpose of this rule, the terms "Proprietary Institution" and "Correspondence, Business, Occupational, and Trade School" are interchangeable.

2.12. ~~School~~ Representative

~~Business, occupational, or trade, school.~~ Any person representing a proprietary institution, whether such school proprietary institution is located within or outside of the State of West Virginia, or acting as an agent, solicitor, procurer, broker, or independent contractor to produce students or enrollees for any such proprietary institution by solicitation in any form at any place in this state.

2.13. Specialized Associate Degree

Degree that may be awarded by accredited ~~schools-proprietary institutions~~ pursuant to a degree program of not less than two (2) academic years and generally no fewer than 60 credits.

2.14. State

The State of West Virginia.

2.175. Terms

Regularly established divisions of the academic-~~school~~ year, each with an established starting and ending date, which is normally referred to as modules, quarters, trimesters, or semesters.

§135-35-3. Exemptions.

3.1. For the purpose of this rule, the following are not defined as a ~~correspondence, business, occupational, or trade school-proprietary institution~~:

3.1.a1. Any school or person licensed or approved to offer education or training by any other statutory licensing or accrediting agency pursuant to statutes of the West Virginia Code other than §18B-2B-9.

3.1.b2. Any ~~school-proprietary institution~~ or organization whose courses of instruction offered are solely for the purpose of teaching preparation of tax returns.

3.1.e3. Any ~~school-proprietary institution~~ conducted by any person, solely on a contractual basis with private or governmental organizations where obtaining a permit is not a condition of the contract and students are not charged tuition or other fees, and no advertisement of courses takes place.

3.1.d4. Any training or apprenticeship program conducted by a company, union, or other organization in which students, members, or employees enrolled in the training or educational programs are not charged tuition or other fees.

3.1.e5. ~~Schools-Proprietary institutions~~ that offer courses which are conducted solely for personal development or information, do not prepare or represent themselves as preparing, an individual for a career or enhancing employment opportunities, are not offering sequential courses comprising an entire program and are not offering courses for more than twenty-four (24) weeks per calendar year.

3.1.f6. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in public or private ~~schools-proprietary institutions~~.

~~3.1.g. Non-profit independent colleges, universities, and other non-profit entities that are accredited by a regional accrediting agency recognized by the United States Department of Education.~~

3.1.h7. Public colleges, universities, and schools under the jurisdiction of the ~~West Virginia Council for Community and Technical College Education~~, the West Virginia Higher Education Policy Commission, or the West Virginia Board of Education.

§135-35-4. Application for Permit.

4.1. Unless exempted as defined in Section 3 of this rule, a person ~~or corporation~~ shall not solicit students or operate any ~~business, occupational, trade school-proprietary institution~~, or branch campus in the state without first applying for or obtaining a permit issued by the Council. A permit shall be issued

authorizing the solicitation of students and/or authorizing the operation of a ~~school~~ proprietary institution if all conditions of the laws and regulations of this state pertaining to ~~correspondence, business, occupational, and trade schools~~ proprietary institutions are met.

4.2. If a person as defined in Section 2 of this rule wishes to operate or continue to operate an proprietary institution ~~school~~ or branch campus or to solicit students in the state, that person shall submit an original application for a permit to do so on forms provided by the Council.

4.3. As a condition of the issuance of a permit, a proprietary institution ~~school~~ shall submit with the application:

4.3.a~~1~~. A copy of the curriculum and description of courses for each program being offered;

4.3.b~~2~~. A copy of the student enrollment contract;

4.3.e~~3~~. A copy of the ~~school's~~ proprietary institution's tuition refund policy and schedule;

4.3.d~~4~~. A fully executed surety bond in the appropriate amount;

4.3.e~~5~~. The appropriate permit fee;

4.3.f~~6~~. A list of all representatives of the ~~school~~ proprietary institution who will be soliciting students; ~~and~~

4.3.g~~7~~. If accredited, documentation from the accrediting agency regarding accreditation status; and

4.3.8. Closure contingency plan.

4.4. Persons shall not be deemed to have submitted an initial application for a permit to operate a proprietary institution ~~school~~ or solicit students in this state unless a properly completed application, the application fee, the required surety bond, and all other information and documentation required by this rule has been submitted to the Council and the following has been provided:

4.4.a~~1~~. A listing of the individual's or organization's prior ~~school~~ proprietary institution operation history in this state, other states, or other countries.

4.4.b~~2~~. Information detailing the involvement in, or relationship to, any ~~school~~ proprietary institution that lost its accreditation, lost its authorization to operate because of violation of state or federal laws, was terminated from participation in the federal financial aid programs, closed without arranging a teach-out for students or arranging refunds, or other discharge of the ~~school's~~ proprietary institution's contractual obligation to the student.

4.4.e~~3~~. Proof at the time of filing an initial application that adequate facilities are available and ready for occupancy and that all instructional equipment, books, supplies, and personnel are in place and ready for operation and verified by an on-site visit by a representative of the Council.

4.5. As a condition of permit renewal, all ~~schools~~ proprietary institutions shall make annual reports to the Council on forms furnished by the Council.

4.6. In addition to the requirements set forth above, all out-of-state ~~schools~~ proprietary institutions shall annually provide evidence of authority to operate or accreditation by the regulatory agency of each

state in which the ~~school~~proprietary institution is located or conducts business.

4.7. A permit shall be valid for one year corresponding to the effective date of the surety bond as required herein.

4.8. Any information of a confidential or proprietary nature provided to the Council by a proprietary institution~~school~~ for the purpose of obtaining or renewing a permit, and exempted from public disclosure pursuant to the terms of ~~West Virginia~~W. Va. Code §29B-1-4, shall not be disclosed for any purposes inconsistent with this rule or statute.

§135-35-5. Approval to Offer Degrees.

5.1. All ~~schools~~proprietary institutions planning to offer a degree at the ~~specialized associate's degree, associate's degree, or higher associate level~~ must receive approval from the Council ~~and/or the West Virginia Higher Education Policy Commission~~ prior to offering the degree. Schools~~Proprietary institutions~~ seeking approval to offer the degree shall submit the following for review:

5.1.a~~1~~. All degree requirements and the course curriculum

5.1.b~~2~~. Faculty credentials and experience

5.1.c~~3~~. A description of all available student support services

5.1.d~~4~~. A description of available library and instructional materials

5.1.e~~5~~. A description of program learning objectives and assessment methodology

5.1.6. Proof of accreditation by an agency approved by the United States Department of Education to accredit institutions awarding associate degrees.

5.2. Once a proprietary institution~~school~~ is approved by the Council to offer the degree, that ~~school~~proprietary institution is subject thereafter to annual reauthorization as provided in Legislative Rule, Title 135 (Council) ~~or 135 (Commission)~~, Series 52, Annual Reauthorization of Degree-Granting Institutions.

§135-35-6. Permit Application Fee.

6.1. Any person applying for a permit to solicit students or operate a proprietary institution~~school~~, as defined by this rule, or branch campus in this state shall submit an initial application fee in the amount of two thousand dollars (\$2,000) with the application.

6.2. Any person applying for renewal of a permit shall submit an annual fee of five hundred dollars (\$500) with the renewal application for each campus operated by the ~~school~~proprietary institution.

6.3. Any person submitting a permit renewal application and surety bond more than sixty (60) days after the last effective date of the applicant's previous surety bond shall be considered a new applicant for the purpose of paying the initial application fee.

§135-35-7. Surety Bond Requirements.

7.1. A proprietary institution~~school~~ located in the state shall submit with its initial or renewal application, the original fully executed continuous surety bond written by a company authorized to do business in this state in the sum of between fifty thousand dollars (\$50,000) and one hundred thousand

dollars (\$100,000), as determined by the Council, unless required otherwise by a provision of this section.

~~7.2. Any school which has its physical facilities located in this state and has operated in this state under the present ownership, or ownership control within the immediate family, for at least ten (10) years is required to submit with its renewal application the original copy of a fully executed continuous surety bond written by a company authorized to do business in this state in the sum of thirty five thousand dollars (\$35,000).~~

~~7.32. Schools-Proprietary institutions~~ having branch campuses within this state shall provide one fully executed surety bond in the appropriate amount providing coverage for all campuses.

~~7.43. In the event of notice of cancellation of the surety bond by a bonding company, the school proprietary institution shall furnish a fully executed replacement to the Council within sixty (60) days of the school's proprietary institution's receipt of the notice of cancellation. But in no event may a proprietary institution-school solicit or enroll new students until the appropriate surety bond is in effect.~~

~~7.54. The termination of a proprietary institution's-school's surety bond coverage shall be grounds for revocation of its permit if the school-proprietary institution fails to replace the bond within the required time.~~

~~7.65. A proprietary institution-school whose physical facilities are located outside this state, and which applies for a permit to solicit students in this state, shall submit a fully executed surety bond in the sum of between fifty thousand dollars (\$50,000) and one hundred thousand dollars (\$100,000), as determined by the Council.~~

~~7.76. The Council may increase the bond requirement of any school-proprietary institution to one hundred fifty thousand dollars (\$150,000) if the school-proprietary institution has its accreditation terminated or its institutional eligibility under the Higher Education Act of 1965, as amended, is terminated for cause.~~

~~7.87. If, in accordance with the standards of the American Institute of Certified Public Accountants, the school's proprietary institution's audited financial statements include a going concern or the auditor issues a are-qualified, adverse, or disclaimed opinion indicating uncertainty regarding the proprietary institution's ability to continue as a going concern, because the school's continued financial viability as an ongoing concern is in doubt, and the school-proprietary institution is not financially sound as defined in Section 2 of this rule, the Council may require the surety bond be increased up to an amount not to exceed four hundred thousand dollars (\$400,000) if the Council determines an increased bond is reasonably necessary to protect the financial obligations legally due to the students then enrolled at the proprietary institution.~~

~~7.98. Confidentiality Statement - any financial information submitted to the Council by a school covered under this rule shall be used by the Council only for purposes of this rule.~~

§135-35-8. Maintenance of Records.

~~8.1. A proprietary institution-school shall maintain records at a central location and have them available for inspection by a representative of the Council or its staff.~~

~~8.2. A proprietary institution-school shall maintain academic records suitable for transcript purposes for each student for fifty (50) calendar years after the student has departed the school, or until the student becomes 65 years of age into perpetuity. The records shall include, as a minimum:~~

8.2.a~~1~~. The name and address of the ~~school~~proprietary institution;

8.2.b~~2~~. The full name and address of the student;

8.2.e~~3~~. The starting and completion or separation dates;

8.2.d~~4~~. The course of instruction or subject;

8.2.e~~5~~. The amount of credit, if any;

8.2.f~~6~~. The grade for each subject; and

8.2.g~~7~~. A statement indicating whether the student graduated or completed the course.

8.3. A ~~proprietary institution~~school shall develop and enforce security measures to protect student records from damage or destruction, including plans for recovery including secure storage at a separate physical location or electronic storage with a third-party vendor. ~~for the required period of time.~~

§135-35-9. Change of ~~School~~Institutional Ownership.

9.1. A proprietary ~~institution~~school must notify the Council at least thirty (30) days in advance of the change of ownership control. Within thirty (30) days of such notification, the Council will notify the ~~school~~proprietary institution of permit status.

9.2. When a ~~proprietary institution~~school is located in this state and has a change of ownership control and the new ownership control is outside of the immediate family of the previous owner, the ~~school~~proprietary institution may continue to operate under the present permit. However, before the solicitation of students can continue, the ~~school~~proprietary institution shall submit to the Council the following:

9.2.a~~1~~. A fully executed surety bond in the same amount currently required by the present permit ~~of fifty thousand dollars (\$50,000).~~

9.2.b~~2~~. The names, addresses, and corporate titles of all persons or other entities having a financial interest in the ~~school~~proprietary institution, and the names and addresses of any other ~~schools~~schools ~~proprietary institutions~~ in which these persons or entities have or have had a financial interest.

9.2.e~~3~~. A revised listing of all programs to be offered if changes were made with new ownership.

9.2.d~~4~~. An application for each representative of the ~~school~~proprietary institution who will be soliciting students.

9.3. If the ~~school~~proprietary institution is located outside this state, the ~~school~~proprietary institution must show evidence of compliance with the laws and regulations in the state where the ~~school~~proprietary institution is located. In addition, before the solicitation of students continues in this state, the ~~school~~proprietary institution must submit the following:

9.3.a~~1~~. A fully executed surety bond in the same amount currently required by the present permit ~~of fifty thousand dollars (\$50,000);~~

9.3.b~~2~~. An application for each representative of the ~~school~~proprietary institution that will be soliciting students in West Virginia;

9.3.e3. A revised listing of all programs to be offered if changes are made with new ownership; and

9.3.d4. The names, addresses, and corporate titles of all persons or other entities having a financial interest in the ~~school~~-proprietary institution.

§135-35-10. ~~School~~-Proprietary Institutional Closing.

10.1. A ~~proprietary institution~~-~~school~~ which is closing, either voluntarily or involuntarily, shall:

10.1.a1. Inform the Council of this action immediately by certified mail;

10.1.b2. Supply the Council with the name, address, and telephone number of the person responsible for closing arrangements;

10.1.e3. Supply the Council with the name, address, telephone number, and the course of study for each student who has not completed his or her course of study;

10.1.d4. Supply the Council with information on the dates of enrollment, the amount of class time left for each student to complete the course, and the amount of entitled refund, if any, for which each student is eligible;

10.1.e5. Inform currently enrolled students by written notice of the appropriate procedures they are to follow to secure refunds due if suitable teachouts have not been arranged, or to continue their education and supply the Council with a copy of this notice; and

10.1.f6. Inform the Council and currently enrolled students of plans to store the permanent student records and the procedure to obtain copies through a third-party transcript custodian.

§135-35-11. Student Enrollment Contract.

11.1. Before the ~~schooling begins~~-instruction commences, all students shall receive a completed, signed and dated enrollment contract specifying both the ~~school's~~-proprietary institution's and student's legal rights and obligations. The agreement may incorporate into the contract by reference information in the ~~school's~~-proprietary institution's catalog, student handbook, or other ~~school~~-proprietary institution publication without printing such information or publication in the contract itself. The enrollment contract shall clearly state and must contain, but is not limited to, the following:

11.1.a1. The name and address of the ~~school~~-proprietary institution;

11.1.b2. The name of the course of study or program, including the number of credit or clock hours of classroom instruction, home study lessons, or other study units required;

11.1.e3. The total cost of the course, term or program for which the student is obligated under the contract including tuition, fees, books, and any other charges the student will incur-~~shall be clearly stated~~;

11.1.d4. The ~~school's~~-proprietary institution's cancellation and refund policy including an explanation of the procedures a student will follow to cancel the contract or enrollment agreement; and

11.1.e5. The signature of the student applicant, a parent or other sponsor if the student is under the age of eighteen (18), and the appropriate ~~school~~-proprietary institution officials, plus the date signed.

11.2. An application for admission is not to be construed as binding on the student, therefore limiting total student financial obligation to the payment of an application fee.

11.3. The ~~school~~proprietary institution shall provide the student with a copy of the completed enrollment agreement that is signed and dated.

11.4. Those ~~schools~~proprietary institutions that are accredited by ~~a national or regional~~an accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding student enrollment contracts to satisfy the requirements of this section. However, in the event that enrollment contracts are not addressed by accrediting agency criteria, the provisions of this section must be followed.

§135-35-12. Cancellation and Refund Policies.

12.1. To obtain a permit a proprietary institution~~school~~ shall have a cancellation and refund policy that incorporates the following provisions:

12.1.a~~1~~. A statement relative to the unused portion of tuition, fees, and other charges if the student does not begin classes, withdraws, or is dismissed.

12.1.b~~2~~. All fees and payments remitted to a proprietary institution~~school~~ by a prospective student shall be refunded, minus any stated application fee not to exceed fifty dollars (\$50), if the student is not admitted due to ineligibility.

12.1.e~~3~~. An admitted student applicant may cancel, by written notice, his or her enrollment any time prior to the first-class day of the session for which the application was made, and the ~~school~~proprietary institution shall refund all tuition paid by the student minus an application fee not to exceed fifty dollars (\$50).

12.1.d~~4~~. For the purposes of refund calculations, an individual's status as a student shall be considered terminated by the ~~school~~proprietary institution not later than seven (7) calendar days after the last day on which the student actually attended the ~~school~~proprietary institution. Termination may be effected earlier by proper notification. A home study program of instruction shall be terminated if a proprietary institution~~school~~ does not receive a lesson or an appropriate response from the student within six months after receipt of the last lesson, and the date of withdrawal shall be the date of the last lesson received. The date of withdrawal initiated by a student shall be the date a letter is postmarked or proper notification is given. The ~~school~~proprietary institution shall provide a receipt for the letter or withdrawal notice received.

12.1.e~~5~~. ~~Schools~~Proprietary institutions are required to submit refunds to individuals or the appropriate agency within twenty (20) days after receipt of a proper notification of termination from a student.

12.1.f~~6~~. The student refund policy for withdrawals and terminations for ~~schools~~proprietary institutions not accredited by an accrediting agency recognized by the United States Department of Education must at a minimum comply with return to Title IV Regulations (R2T4) under the United States Department of Education. ~~the following:~~

12.1.f.1. ~~A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges less the application fee.~~

~~12.1.f.2. A student who begins a term and withdraws after completing more than ten percent (10%) through twenty five percent (25%) of the term is entitled to a refund of seventy five percent (75%) of the charges less the application fee.~~

~~12.1.f.3. A student who withdraws after completing more than twenty five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges less the application fee.~~

~~12.1.f.4. A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund.~~

12.2. Refunds shall be calculated for a specific term as defined in Section 2 of this rule, or the total cost of programs not exceeding one year. In the event that students are financially obligated for a year-long program, the refund policy shall be on a weekly prorata basis through the first sixty percent (60%) of the program. The student's financial commitment shall not be for more than one year at any given time.

12.3. Those schools-proprietary institutions that are accredited by ~~a national or regional~~ an accrediting agency recognized by the United States Department of Education, may use the accrediting agency's refund policy to meet the requirements of this section. However, student refunds must be made within twenty (20) days after receipt of a proper notification of termination.

12.4. Those schools-proprietary institutions having their physical facilities located outside this state must comply with the cancellation and refund policies of their home state. If there is no state cancellation and refund policy in their home state, Section 142 of this policy must be followed.

§135-35-13. Advertising and Marketing.

13.1. Each ~~school-proprietary institution~~ and its representatives shall not make or cause to be made any oral, written, or visual presentation in connection with the offering or publicizing of a subject or course of instruction which is false or misleading.

13.2. In its advertising and marketing materials, a proprietary institution-school shall:

13.2.a1. Limit reference to its authority to operate to "Permit to Operate Issued by the West Virginia Council for Community and Technical College Education;

~~13.2.b. Disclose that it is a home study school if it provides such instruction;~~

13.2.e2. Advertise starting or average salaries of its former students only if these claims can be documented for the most recent twelve- (12) month period preceding the advertisement for more than fifty percent (50%) of the graduating class.

13.3. In its advertising, a proprietary institution-school shall not:

13.3.a1. Advertise that it is "supervised," "recommended," "endorsed," "approved," or "accredited" by the Council;

13.3.b2. Describe its courses of instruction and subjects in a misleading manner.

13.3.e3. Use photographs or other illustrations in ways which misrepresent the size and location of the ~~school-proprietary institution~~, its equipment and facilities for the career for which the student is being trained;

13.3.d4. Represent that it is endorsed by or affiliated with a college or university, unless such statements can be documented;

13.3.e5. Advertise or indicate in any manner the transferability, or possibility of transferability, of its credits to colleges and universities unless it has written evidence on file of current acceptability of such credits from said colleges or universities;

13.3.f6. Advertise that it is endorsed by manufacturers, business establishments, or organizations engaged in the line of work for which the ~~school~~ proprietary institution gives training unless written documentation regarding the endorsement is on file;

13.3.g7. Advertise accredited status unless such status has been received from an accrediting body currently listed as recognized by the United States Department of Education and such accrediting body must be named if used in any advertisement or promotional material;

13.3.h8. Advertise as an employment agency, or under the same or similar name as such an agency, or advertise training courses in the "Help Wanted" section of any newspaper;

13.3.i9. Advertise any tuition, fees, or other charges in amounts other than those currently on file in the chancellor's office or advertise them without showing the total costs;

13.3.j10. Falsely guarantee job placement or employment at a certain wage; or

13.3.k11. Use endorsements, commendations, or recommendations by students without their written consent.

13.3.12. Assert or imply that graduates will be eligible for licensure, or eligible to sit for a licensure examination, in this state or any other state, unless that claim is backed by evidence from the appropriate licensing entity or entities.

13.4. A proprietary ~~institution-school~~ institution eligible to offer a course of instruction or program leading to an associate degree or specialized associate degree shall, in any advertisement, promotional material, or the ~~school~~ proprietary institution catalogue refer to this degree designation as an "Associate Degree" or a "Specialized Associate Degree."

13.5. Those ~~schools~~ proprietary institutions that are accredited by a ~~national or regional~~ an accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding advertising to satisfy the requirements of this section. However, in the event that advertising is not addressed by accrediting agency criteria, the provisions of this section must be followed.

§135-35-14. Student Complaints.

14.1. A proprietary ~~institution-school~~ institution shall attempt to resolve student complaints promptly and fairly and shall not subject a student to punitive action as a result of a written complaint having been filed with the ~~school~~ proprietary institution or Council.

14.2. The ~~school~~ proprietary institution shall have written procedures that describe in detail how a student may register a complaint with the ~~school~~ proprietary institution and Council, and how the ~~school~~ proprietary institution will investigate and attempt to resolve the complaint.

14.3. The Council will begin the investigation of a written complaint within thirty (30) days of the date

of receipt of the complaint unless it is a complaint regarding a matter over which the Council has no jurisdiction or it is intrinsically not credible. The initial investigation should be completed within sixty (60) days of the filing of the complaint.

14.4. The ~~school~~-proprietary institution shall provide all enrolled students with a written copy of the student complaint procedures and make prospective students aware that such procedures exist and provide copies upon request.

14.5. Each ~~school~~-proprietary institution that is being investigated, as a result of a written student complaint, will be notified by the Council that such an investigation is being conducted, and a copy of the written complaint will be forwarded to the ~~school~~-proprietary institution. The name of the complainant may be withheld if so requested.

14.6. The ~~school~~-proprietary institution being investigated must respond to any inquiry by the Council relating to the investigation within ten (10) work days of its receipt of the inquiry.

14.7. Any ~~school~~-proprietary institution refusing to cooperate with an investigation of a written student complaint by the Council or any other governmental agency shall have its permit to operate or solicit students in West Virginia revoked in accordance with the due process provisions of Section 14 of these rules.

14.8. The Council, upon completion of the investigation of a written student complaint, will supply the ~~school~~-proprietary institution by certified mail with a written report of the findings and any proposed corrective action. The ~~school~~-proprietary institution will have twenty (20) work days to reply to the Council before any action may be taken.

14.9. The ~~school~~-proprietary institution has a right to request a hearing regarding any findings or action proposed by the Council resulting from an investigation involving student complaints.

14.10. The Council may forward any information pertaining to a written complaint found to have merit involving federal student financial aid to the United States Department of Education.

§135-35-15. Warning, Suspension, Withdrawal, or Revocation of Accreditation, License, and/or Approval to Operate.

15.1. A proprietary institution-~~school~~ shall provide the Council with a copy of any notice of warning, suspension, revocation, or other adverse action received from any ~~national, regional, or state~~ accrediting and/or approval agency or the United States Department of Education within five (5) days of receipt of such notice. The ~~school~~-proprietary institution shall at the same time inform the Council in writing of activities being taken to correct the deficiencies.

15.2. The Council may for good cause, suspend, withdraw, or revoke the authorization of a proprietary institution-~~school~~ to operate within this state or to solicit students within the state. Good cause shall consist of:

15.2.a1. Loss of accreditation by a ~~nationally or regionally~~-recognized accrediting agency;

15.2.b2. Cancellation of the ~~school's~~-proprietary institution's bond by the bonding company and failure to secure a replacement in accordance with this rule;

15.2.e3. A final determination that the ~~school~~-proprietary institution has engaged in conduct prohibited by this rule, and the conduct warrants suspension, withdrawal, or revocation of the approval to

operate a ~~proprietary institution-school~~ or solicit students in this state, and corrective action has not been taken within the required time;

15.2.~~d~~4. Closure of the ~~school-proprietary institution~~ without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the proprietary ~~institution's~~ contractual obligations to the students;

15.2.~~e~~5. Conviction of the owner of a ~~proprietary institution-school~~ for a felony or crime involving administration of the ~~school-proprietary institution~~ or involving Federal Student Assistance programs; or

15.2.~~f~~6. Refusal to cooperate with an investigation pursuant to Section 13 of this rule.

15.3. Upon receipt by the Council of information constituting any of the above grounds for suspension, withdrawal, revocation, or other adverse action, the Council shall notify the ~~school-proprietary institution~~ and its owner in writing of its intent to recommend suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.

15.3.~~a~~1. The owner of the ~~school-proprietary institution~~ may, within ten (10) ~~work-business~~ days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) ~~work-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.

15.3.~~b~~2. The hearing shall be conducted by the Chancellor of the ~~West Virginia Council for Community and Technical College Education~~ or the chancellor's designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the ~~Code of West Virginia~~ W. Va. Code.

15.3.~~c~~3. The Chancellor or the chancellor's designee may continue the hearing at the request of the ~~school-proprietary institution~~ for good cause shown. Continuances shall not be granted as a matter of right.

15.3.~~d~~4. If the owner or a representative of the ~~school-proprietary institution~~ does not request a hearing within the requisite time period, the recommendation of the chancellor shall be deemed unchallenged by the ~~school-proprietary institution~~ and reported to the Council for final action.

15.4. At the hearing, the grounds for suspension, withdrawal, or revocation of authorization to operate the ~~school-proprietary institution~~ or other adverse action must be established by clear and convincing evidence.

~~15.4.a. The owner of the school or its designated representative may appear to defend the interests of the school, may present witnesses and evidence on behalf of the school, and may cross-examine witnesses against the school. The school may retain legal counsel to represent its interests at the hearing.~~

~~15.4.b. The Council does not have the power to issue subpoenas, but the chancellor or the school may request the appearance of witnesses at the hearing, who shall be notified of such request by the chancellor or the chancellor's designee with the date, time, and location of the hearing in writing.~~

~~15.4.c. The rules of evidence shall not strictly apply, and evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidence offered by either party shall be ruled upon by the chancellor or the chancellor's designee who conducts the hearing.~~

~~15.4.d. The hearing shall be recorded by mechanical means or by a certified court reporter retained by the chancellor.~~

15.5. The Chancellor shall make written findings of fact and conclusions of law as to whether or not the ~~school-proprietary institution~~ or its representative has committed acts in violation of the law or these rules which would justify the suspension, withdrawal, or revocation of its authorization to operate. Such findings and conclusions shall be reported to the Council, and a copy of same shall be provided to the ~~school~~ proprietary institution on the same date it is filed with the Council and placed upon its agenda for action.

15.6. The Council shall act upon the report at its next regularly scheduled business meeting, or a special meeting if one is called, to accept or reject the findings of the Chancellor or the chancellor's designee, and to suspend, withdraw, or revoke the authority of the ~~school-proprietary institution~~ or its representative to operate and/or solicit students within this state. Notification of the Council's action shall be given to the ~~school-proprietary institution~~ and/or its representative in writing within two (2) business days following such action of the Council, by certified mail, or by personal delivery. For good cause shown in the minutes of the Council's, action upon the chancellor's report may be deferred to a date not later than the next regularly scheduled business meeting of the Council.

15.7. A proprietary institution-~~school~~ or its representative may appeal an adverse action of the Council to a court of competent jurisdiction within the time period specified by state law.