

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III**

ADMINISTRATIVE LAW DIVISION

Form #2 ■

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Procedural CITE AUTHORITY: WV Code §18B-1B-4, 18B-1B-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 5

TITLE OF RULE BEING AMENDED: Guidelines for Governing Boards in Employing and Evaluating
Presidents or Other Administrative Heads of Institutions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 8, 2005 AT 3:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Office of the Chancellor

Higher Education Policy Commission

1018 Kanawha Blvd. East

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.20

TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION

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SERIES 5
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING
PRESIDENTS OR OTHER ADMINISTRATIVE HEADS OF INSTITUTIONS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SECTION 1. GENERAL

- 1.1 Scope - Rule establishing guidelines for governing boards to use in employing and evaluating presidents. ~~or other administrative heads of institutions.~~
- 1.2 Authority - West Virginia Code § 18B-1B-4, ~~§ 18B-1B-7,~~ § 18B-1B-6, ~~§ 18B-1-6~~
- 1.3 Filing Date - ~~December 20, 2002~~
- 1.4 Effective Date - ~~January 19, 2003~~
- 1.5 Repeal of former Rule - Repeals and replaces ~~Series 59 of Title 128 and 131 and Series 5 of Title 133~~ former rule dated January 19, 2003.

SECTION 2. STATE COLLEGES AND UNIVERSITIES

- 2.1 The provisions of this ~~section~~ rule shall only apply to the employment of presidents of Bluefield State College, Concord College University, ~~Eastern West Virginia Community & Technical College~~, Fairmont State College University, Glenville State College, Marshall University, Shepherd College University, ~~Southern West Virginia Community & Technical College~~, West Liberty State College, ~~West Virginia Northern Community & Technical College~~, West Virginia School of Osteopathic Medicine, West Virginia State College University and West Virginia University.
- 2.2 Upon the occurrence of a vacancy in the position of President at one of the institutions set out in section 2.1, the governing board of the institution shall undertake a search for a new President. The governing board is responsible for the search, both procedurally and financially. The governing board shall adopt a procedure, consistent with this rule, governing the search. The procedure shall require, at the least, that:
 - 2.2.1 If a search committee is appointed by the governing board the chair and a vice-chair shall be selected from among those citizen members of the governing board who were appointed by the Governor.

- 2.2.2 A statement of characteristics and qualities which the new President should possess shall be adopted by the governing board and utilized in soliciting and evaluating the candidates.
- 2.2.3 If a search committee is appointed, it shall include representation of faculty, students, and staff.
- 2.2.4 A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and transmitted to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals.
- 2.2.5 Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, ~~that~~ during the campus visits, students, classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates and their comments solicited by the governing board. Interviews with semi-finalists, at the option of the governing board, may also be conducted on campus.
- 2.2.6 Background checks may be conducted on each candidate prior to interviewing with the search committee. Background checks shall be conducted on finalists prior to any campus visit made at the invitation of the search committee. On-site visits to the candidates' institutions current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in making background checks and, at a minimum, shall include confirmation of degrees, past employment, and criminal and credit checks.
- 2.3 The governing board, at its discretion, may appoint additional students, faculty, staff, community leaders, alumni, or other citizens to any search committee it appoints.
- 2.4 Candidates may be considered through their own application or by nomination.
- 2.5 Members of the governing board, or any search committee appointed, shall not provide information about the names or backgrounds of any candidates to anyone not a member of the governing board or search committee until the finalists have been selected and agreed to a campus visit. When candidates are invited to a preliminary interview with the search committee, they shall be notified that confidentiality will be waived in the event that they are invited for a campus interview and their names and backgrounds shall be

publicly released at the time they accept an invitation for a campus visit.

- 2.6 At the request of an institution, the Higher Education Policy Commission may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search in whatever manner the governing board may choose.
- 2.7 The governing board shall confer with the Chancellor and agree to a method and process for Policy Commission members to attend interviews of the finalists, or schedule their own, and approve the final selection of a President by the governing board. The governing board, or any search committee appointed by it, shall promptly transmit to the Chancellor a copy of the procedure adopted to govern the search and agendas and minutes of meetings involving the search.
- 2.8 Terms of compensation and contracts discussed with or offered to candidates shall be consistent with any guidelines or the sections of this rules regarding presidential compensation and contracts, adopted by the Policy Commission and any compensation agreed to must be approved by the Policy Commission.
- 2.9 Interim Presidents appointed by a governing board ~~until a permanent President is employed~~ must be approved by the Policy Commission. An individual, with approval of the Policy Commission, may be predesignated as an interim President to fill an unforeseen vacancy in the presidency.

SECTION 3. ~~REGIONAL CAMPUSES OF WEST VIRGINIA UNIVERSITY AND ADMINISTRATIVELY LINKED COMMUNITY & TECHNICAL COLLEGES~~

~~WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY~~

- 3.1 The governing board of West Virginia University shall adopt a procedure, consistent with W. Va. Code § 18B-6-1, governing the appointment of a Presidents at the regional campuses of West Virginia University West Virginia University Institute of Technology and approval of that appointment by the governing board.
- ~~3.2 The governing board of an institution with an administratively linked community and technical college shall adopt a procedure, consistent with W. Va. Code § 18B-6-1, governing the appointment of the president of the community and technical college and approval of that appointment by the~~

governing board.

SECTION 4. COMPONENT COMMUNITY & TECHNICAL COLLEGES

- ~~4.1 The president, consistent with any procedures adopted by the governing board, shall appoint the provost of a community and technical college that remains a component of that institution.~~
- ~~4.2 The president of an institution with a component community and technical college shall obtain the approval of the Policy Commission before appointing a provost for the community and technical college.~~

SECTION 4. PRESIDENTIAL CONTRACTS

- 4.1 Governing boards under the jurisdiction of the Policy Commission must receive the approval of the Policy Commission of the total compensation package from all sources for a President when the President is initially hired and for any subsequent changes in the total compensation package.
- 4.2 Presidents are considered as will and pleasure employees of their governing board unless that status is specifically altered by the President's letter of appointment or contract. Presidential contracts exceeding a term of one fiscal year must conform with the following:
- 4.2.1 An offer of employment as President, or guarantee of employment in that or another position, should not exceed a total of three years if the President has served less than three years, or five years if the President has served at least five years. A President assigned to an alternative position during a guaranteed term of employment must perform substantive duties on behalf of the institution in order to collect his or her salary;
- 4.2.2 All contracts with a term greater than one fiscal year must be conditioned upon availability of funding;
- 4.2.3 A governing board may agree to reasonable notice of the intent to not renew a contract. It is recommended that such notice not exceed one year but may be increased up to two years after five years of service by the President;
- 4.2.4 All contracts with a commitment of continued employment must provide that the President may be discharged "for cause" and that

such a discharge nullifies any commitment to continued employment. "Cause" includes, but is not limited to official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, misfeasance, insubordination, and acts of commission or omission in violation of the governing board's directives or policies.

4.3 Provisions in existing contracts that are inconsistent with this rule may remain in effect at the discretion of the governing board.

SECTION 5. COMPENSATION

- 5.1 The total compensation of a President, from all sources, must receive prior approval of the Policy Commission. Forms of compensation which must receive prior approval include: annual salary derived from whatever fund source, deferred compensation, and cash housing or vehicle allowances. The governing board may require approval of other compensation such as non-state funded discretionary funds, compensation from other employment or for service on a corporate board of directors, and payment of dues or assessments for membership in non-professional related clubs or associations, and any such compensation received must be reported to the Chancellor. If approval of deferred compensation is being sought the institution must submit an actuarial report to the Policy Commission detailing the present cash value of the deferred compensation and conditions for eligibility or receipt of the deferred compensation.
- 5.2 The total salary from all fund sources for a President should be based on a comparison of the salaries for all public institutions in the nation of that class and budget size category, as reported by the College and University Personnel Association (CUPA), and should be between the salary listed for the 20th percentile budget category and that listed in the 80th percentile. The governing board of an institution wishing to pay a presidential salary in excess of the 80th percentile must submit a detailed rationale to the Policy Commission justifying the action. Other data sources such as the "Chronicle of Higher Education" may be utilized by the governing board, as appropriate, to establish salary ranges. For the West Virginia School of Osteopathic Medicine, comparable data from the American Association of Colleges of Osteopathic Medicine or other sources, shall be utilized.
- 5.3 A percentage presidential salary increase in excess of the average percentage salary increase for all personnel at that institution within the last calendar year will be approved only if a detailed rationale of its governing board justifying the increase is submitted to the Policy Commission.
- 5.4 Housing allowances granted a President not provided housing by the

institution shall not be considered as part of the Presidential salary for the purposes of Section 5.2 above.

5.5 The Chancellor shall annually make available to the governing boards and Policy Commission the most recent CUPA or other comparable data applicable to their institutions.

SECTION 5. COUNCIL FOR COMMUNITY & TECHNICAL COLLEGE EDUCATION

~~5.1 The appropriate governing board shall confer with the Vice Chancellor for Community and Technical College Education and Workforce Development and agree to a method or process for members of the Council for Community and Technical College Education to attend interviews of the finalists for president, provost, or administrative head of its community and technical college, or schedule their own, and make recommendations to the Policy Commission, governing board, or president regarding the selection or approval of the president, provost, or administrative head.~~

SECTION 6. PRESIDENTIAL EVALUATION

- 6.1 Each governing board shall conduct a written performance evaluation of the institution's President every fourth year of the President's employment. The President's performance shall be evaluated in relation to the duties and responsibilities assigned the President by the governing board, the success of the institution in meeting each requirement of its institutional compact, and any other criteria previously established by the governing board.
- 6.2 The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel, institutional boards of advisors as appropriate, staff of the governing board and persons who are knowledgeable in higher education matters who are not otherwise employed by a governing board to assist in its evaluation of the President in a way deemed most appropriate by the governing board.
- 6.3 The governing board committee, visiting team, or other body chosen by the governing board, shall visit the campus to receive the views of the President, governing board members, administrators, faculty, classified employees, students, alumni, and community leaders. A schedule of interviews, meetings, and open forums that will assure a careful assessment of leadership and condition of the campus shall be arranged.
- 6.4 The governing board shall use the report of its committee, visiting team, or

other body chosen by the governing board to assist in its own written evaluation of the President. The governing board's evaluation shall be reported to the President and Chair of the Policy Commission.

6.5 The Chancellor shall provide the governing boards, upon request, with evaluative tools, guidelines, and procedures recommended for the assessment and evaluation of college and university presidents and provide any assistance requested by a governing board in performing the evaluations set out in this rule.

~~6.6 The governing board of the employing institution shall adopt procedures to be used in evaluating the presidents of the regional campuses of West Virginia University and the administratively linked community and technical colleges, except the written evaluation shall be done by the president of the employing institution and not its governing board.~~

6.7 6 In addition to the formal evaluation every four years, each President shall receive a written yearly evaluation in a manner and form decided by the governing board. ~~or by the president of the employing institution for presidents of the regional campuses or administratively linked community and technical colleges.~~

SECTION 7. PRESIDENTIAL COMPENSATION

7.1 ~~Any change in the total compensation package or terms of employment of a president's appointment must be approved by the Policy Commission for these institutions set out in Section 2.1 of this rule and must be consistent with guidelines of the Policy Commission.~~

SUMMARY

**TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION
SERIES 5
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING
PRESIDENTS**

This rule establishes guidelines for governing boards to use in employing and evaluating presidents.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-5: Guidelines For Governing Boards In Employing And Evaluating President:

Type of Rule: _____ Legislative _____ Interpretive X Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Boulevard East
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There is no increase in the costs of presidential searches and evaluations as a result of this policy.

3. Objectives of These Rules:

This rule establishes policies and procedures for the employment and evaluation of presidents by the institutional boards of governors.

Rule Title: 133-5: Guidelines For Governing Boards In Employing And Evaluating President

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: February 7, 2005

Signature of Agency Head or Authorized Representative:





**WEST VIRGINIA
H I G H E R
E D U C A T I O N
P O L I C Y
C O M M I S S I O N**

Mary Clare Eros
Chairman

J. Michael Mullen
Chancellor

February 7, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol
Charleston, WV 25305


Dear Secretary Ireland:

On behalf of the Higher Education Policy Commission, I am submitting the following procedural rule for a 30 day public comment period.

Title 133, Series 5: *Guidelines for Governing Boards in Employing and Evaluating Presidents*

This rule is a modification of existing rule Title 133, Series 5, dated January 19, 2003 which will remain in effect until the final rule is approved.

Sincerely,


J. Michael Mullen
Chancellor