

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #5

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**FILED**

2005 JUN 14 A 11: 23

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: W. Va. Code §18B-1B-4, 18B-1B-6

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 &  
Evaluating Presidents or Other Administrative Heads

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: Guidelines for Governing Boards in Employing &  
Evaluating Presidents

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS July 14, 2005

  
Authorized Signature

**TITLE 133  
PROCEDURAL RULE  
HIGHER EDUCATION POLICY COMMISSION**

**FILED**

2005 JUN 14 A 11: 23

**SERIES 5  
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND  
PRESIDENTS**

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.
- 1.2 Authority - West Virginia Code § 18B-1B-4, 18B-1B-6,
- 1.3 Filing Date - June 14, 2005
- 1.4 Effective Date - July 14, 2005
- 1.5 Repeal of former Rule - Repeals and replaces former rule dated January 19, 2003.

**SECTION 2. STATE COLLEGES AND UNIVERSITIES**

- 2.1 The provisions of this rule shall only apply to the employment of presidents of Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State 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, 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' 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 the sections of this rule regarding presidential compensation and contracts.
- 2.9 Interim Presidents appointed by a governing board 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. 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 President at West Virginia University Institute of Technology and approval of that appointment by the governing board.

### **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 on 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 20<sup>th</sup> percentile budget category and that listed in the 80<sup>th</sup> percentile. The governing board of an institution wishing to pay a presidential salary in excess of the 80<sup>th</sup> 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 only be approved 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 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 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.

**West Virginia Higher Education Policy Commission  
Meeting of June 10, 2005**

**ITEM:** Approval of Series 5, *Guidelines for Governing Boards in Employing and Evaluating Presidents*

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved, That the West Virginia Higher Education Policy Commission approves Series 5, Guidelines for Governing Boards in Employing and Evaluating Presidents*

**STAFF MEMBER:** Bruce Walker

**BACKGROUND:**

Senate Bill 448 necessitated changes in Series 5 of the Commission's rules to reflect certain changes in governance and the selection of presidents. The decision was also made to incorporate previous guidelines the Commission had adopted regarding presidential compensation and contracts. The Commission previously approved the attached draft of Series 5 for submission to the Secretary of State's Office for a 30 day comment period. The only comments received were from West Virginia University, which are attached.

It is recommended that no changes to the draft rule be made pursuant to those comments and that the rule be approved.



West Virginia University

General Counsel's Office

March 8, 2005

**By Facsimile Transmission and Regular Mail**

J. Michael Mullen, Chancellor  
West Virginia Higher Education Policy Commission  
1018 Kanawha Blvd. East, Suite 700  
Charleston, WV 25301

Re: Proposed Amendments to Series 5

Dear Chancellor Mullen:

Please accept these comments in response to the proposed changes to Title 133, Series 5, "Guidelines for Governing Boards in Employing and Evaluating Presidents" ("Series 5").

As an initial matter, the Board is concerned that Series 5, as amended, will not strike the balance intended by the Legislature between overall policy-setting by the Commission and institutional governance by the individual Boards. The extent of detailed limitations and requirements contained in these Rules significantly limit the various Boards' discretion, which is particularly significant when applied to one of the most fundamental responsibilities of governance bodies, the employment, evaluation and compensation of the chief executive officer.

We believe that a more appropriate Procedural Rule would set forth the general goals which each Board should focus on in developing plans for presidential searches, performance reviews and terms of employment. Such a Rule would, for example, require Boards to conduct market comparisons and examine best practices, without identifying required clauses; direct Board performance reviews towards general themes such as satisfaction of institutional compacts, and generally require broad input, without specifying the make-up of review committees; and recognize the statutory obligation for the Commission to "[a]pprove the total compensation package from all sources for presidents ...", without repeating analysis that the Boards will have already conducted, or second-guessing those same Boards on this central governance matter. Further, some of the specific restrictions on presidential contracts will limit the ability of state colleges and universities in West Virginia to attract the most qualified candidates for these critical positions, at a time when presidential application pools are shrinking nationally and regionally.

**Office of the President**

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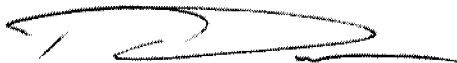
Chancellor J. Michael Mullen  
March 8, 2005  
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Without limiting the application of the preceding comments to Series 5 generally, some additional, more specific comments follow:

- Section 4.2.5 – While we agree that a “for cause” provision is very appropriate, we believe that this level of detail is not appropriate in Series 5. The contents of Section 4.2.5, among other clauses, would be more appropriate in a set of non-binding guidelines intended to assist rather than restrict the various Boards.
- Section 5.1 – We believe that the particular detailed discussion of deferred compensation plans goes beyond the general “approval” oversight intended by the Legislature in W. Va. Code Section 18B-1B-4(a)(18).
- Section 5.3 – This clause anticipates a particularly significant degree of “second-guessing” of Board decisions. Where merit-based salary adjustments occur, Section 5.3 will also have the effect of requiring the Boards to justify presidential salary increases that might be greater than the average increase and yet in line, for example, with roughly half of all institutional employees.

We greatly appreciate the opportunity to respond to the draft amendments to Series 5. Please do not hesitate to call me if you wish to discuss this further.

Very truly yours,



Thomas Dorer  
General Counsel

cc: D. Leech



**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

June 14, 2005

The Honorable Betty Ireland  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Blvd., East  
Charleston, WV 25305

Dear Secretary Ireland:

On behalf of the Higher Education Policy Commission, I am submitting the following procedural rule which was approved by the Commission on June 10, 2005:

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

Comments received during the public comment period and responses to the comments are attached.

Sincerely,

J. Michael Mullen  
Chancellor

Enclosures