

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

2008 SEP 10 PM 4:18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Sept. 10, 2008

NOTICE OF AN EMERGENCY RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

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

EMERGENCY 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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

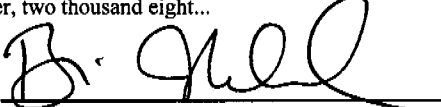
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

House Bill 3215 passed by the Legislature during the 2008 regular session directed the Higher Education Policy Commission to file legislative and emergency rules to revise the presidential selection process.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(e) The Legislature finds that an emergency exists and, therefore, the Commission and the Council each shall file a rule to implement the provisions of this section as an emergency rule by the first day of September, two thousand eight...


Authorized Signature

Use additional sheets if necessary

FILED

TITLE 133
PROCEDURAL EMERGENCY RULE 2008 SEP 10 PM 4: 18
HIGHER EDUCATION POLICY COMMISSION

SERIES 5
OFFICE WEST VIRGINIA
SECRETARY OF STATE
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING
PRESIDENTS OR OTHER ADMINISTRATIVE HEADS

§133-5-1. 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~~7~~.
- 1.3. Filing Date - ~~June 14, 2005~~ September 10, 2008
- 1.4. Effective Date - ~~July 14, 2005~~ September 10, 2008
- 1.5. Repeal of former Rule – Repeals and replaces former rule dated ~~January 19, 2003~~ July 14, 2005.

§133-5-2. 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 sSection 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 search procedure adopted by the governing board shall be approved by the West Virginia Higher Education Policy Commission ("Commission") prior to being implemented. The procedure shall require, at the least, that:
 - 2.2.1. ~~If a search committee is appointed by the governing board, the chair and or a vice chair shall be selected from among those citizen members of the governing board who were appointed by the Governor.~~

- 2.2.21. 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.
- 2.2.32. If a search committee is appointed, it shall include representation of faculty, students, and staff, and other constituencies of the institution. The number and constituency of the membership of the committee shall be at the discretion of the governing board.
- 2.2.43. A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and ~~transmitted~~ distributed to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals for the purpose of advertising the position.
- 2.2.54. Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates, and their comments shall be solicited by the governing board. ~~Interviews with semi-finalists, at the option of the governing board, may also be conducted on campus.~~
- 2.2.65. Background checks may be conducted on each candidate prior to interviewing with the search committee or governing board. Background checks ~~shall~~ should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall be conducted prior to any final selection by the search committee or the governing board. 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~~ conducting background checks and, at a minimum, shall include confirmation of degrees; and 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.~~
- 2.4.3. Candidates may be considered through their own application or by nomination.
- 2.5.4. Members of the governing board, or any search committee appointed, ~~shall~~

may not provide information about the names or backgrounds of any candidates, without their consent, to anyone who is not a member of the governing board or search committee, or authorized agents or staff as designated in the search procedures approved by the Commission, 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 of the conditions under which that confidentiality will may be waived as to background checks and that 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 formal campus visit.

2.6.5. 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.~~

2.7.6. ~~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. The Chancellor shall serve as an ex officio, non-voting member on all search committees or bodies serving in that capacity during the search process. The Commission reserves the right to conduct independent interviews of one or more finalists. Prior to exercising such option, it shall give sufficient notice to the governing board so that any such interviews will occur sufficiently close to the final decision of the governing board. All presidential appointments shall be approved by the Commission.~~

2.8.7. 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.

2.9.8. Interim Presidents appointed by a governing board ~~must~~ shall 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.~~

~~§133-5-3. 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.~~

§133-5-4-3. Presidential Contracts.

- 4.3.1. Governing boards under the jurisdiction of the ~~Policy~~ Commission ~~must~~ shall 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.
- 4.3.2. ~~Presidents are~~ A President is considered as will and pleasure employees of ~~their~~ his/her 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~~ shall conform ~~with~~ to the following:
 - 4.3.2.1. An initial offer of employment as President, or guarantee of employment in that or another position, ~~should~~ may not exceed ~~a total of three~~ two years, ~~if the President has served less than three years, or five years if the President has served at least five years.~~ After the initial contract, the governing board may offer contracts of up to five years. A President assigned to an alternative position during a guaranteed term of employment ~~must~~ shall perform substantive duties on behalf of the institution in order to collect his or her salary.
 - 4.3.2.2. All contracts with a term greater than one fiscal year ~~must~~ shall be conditioned upon availability of funding.
 - 4.3.2.3. A governing board may agree to reasonable notice of the intent ~~to~~ not to 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.
 - 4.3.2.4. 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.
- 4.3.3. Provisions in contracts existing ~~contracts~~ on the effective date of this rule that are inconsistent with this rule may remain in effect at the discretion of the governing board unless the provisions are in violation of the statute.

§133-5-5-4. Compensation.

- 5.4.1. The total compensation of a President, from all sources, ~~must~~ shall receive prior approval of the ~~Policy~~ Commission. Forms of compensation which ~~must receive~~ require prior approval include: annual salary derived from whatever funding source, deferred compensation, and ~~each~~ 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~~ shall be reported to the Chancellor. If approval of deferred compensation is being sought, the institution ~~must~~ shall 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.
- 5.4.2. The total salary from all funding sources for a President should be based on a comparison of the presidential salaries at the institution's peer institutions as defined by the Commission. ~~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 national 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.~~
- 5.4.3. 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~~ may only be approved only if a detailed rationale of its governing board justifying the increase is submitted to the ~~Policy~~ Commission.
- 5.4.4. Housing allowances granted a President not provided housing by the institution ~~shall~~ may not be considered as part of the ~~P~~presidential salary for the purposes of Section ~~5.2~~ 4.2 above.
- 5.4.5. Annually, ~~T~~he Chancellor shall ~~annually~~ make available to the governing boards and ~~Policy~~ Commission the most recent College and University Professional Association for Human Resources (CUPA-HR) or other

comparable salary data applicable to their institutions.

§133-5-6-5. Presidential Evaluation.

- 6.5.1. Each governing board shall conduct a formal and structured written performance evaluation of the institution's President every ~~fourth~~ third 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.
- 6.5.2. The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel, including faculty and staff as well as students, institutional boards of advisors ~~as appropriate, staff of the governing board~~ and persons who are knowledgeable ~~in~~ in of higher education matters who are not otherwise directly employed by a governing board to assist in its evaluation of the President ~~in a way deemed most appropriate by the governing board~~.
- 6.5.3. 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, non-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.
- 6.5.4. 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 of the institution, the Chancellor, and the Chair of the Policy Commission.
- 6.5.5. 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.
- 6.5.6. The governing board shall conduct a written evaluation at the end of the initial contract period. In addition to the formal and structured evaluation every ~~four~~ three years and at the end of the initial contract period, each President shall receive a written yearly evaluation in a manner and form decided by the governing board.

5.7. The Commission shall not approve any request for an increase in compensation of a President prior to receiving an evaluation of that President for the year immediately preceding the requested increase.

**TITLE 133
EMERGENCY RULE / LEGISLATIVE RULE
HIGHER EDUCATION POLICY COMMISSION**

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

Summary of Proposed Changes

Substantive Changes

Indicates that the Policy Commission shall approve all search procedures prior to their implementation. Section 2.2

Deletes language regarding the manner in which the chair and vice chair of the search committee are selected. Section 2.2.1

Clarifies requirements for background checks by specifying governing boards should conduct background checks on finalists prior to visits to campus by finalists and mandating that background checks be conducted prior to final selection. Section 2.2.6

Indicates that the Chancellor shall serve in an ex officio, non-voting capacity on all search committees. In addition, it clarifies that the Policy Commission reserves the right to conduct independent interviews of finalists and if the Commission elects to, it shall give sufficient notice to the governing board. Section 2.6

Indicates all presidential appointments are to be approved by the Commission. Section 2.6

Removes the provision allowing institutions, with the approval of the Policy Commission, to pre-designate an Interim President. Section 2.8

Indicates that initial contracts of employment for presidents may not exceed two years, and subsequent contracts may not exceed five years, as required by House Bill 3215. Section 3.2.1

Removes the stipulation that governing boards be bound by the 80th and 20th percentile ranges as reported by CUPA-HR in determining presidential salaries. They will be expected to use appropriate sources, including the salaries of the institution's peers, in determining salaries. Section 4.2

Indicates that Presidents shall have formal, structured evaluations every third year of employment. Sections 5.1 and 5.6

Stipulates that the governing board conduct a written evaluation of the president at the end of his/her initial contract in addition to the formal/structured evaluation every three years. Also stipulates that governing boards conduct a written evaluation of the Presidents annually. Section 5.6

Indicates that the Policy Commission will not approve presidential salary increases without receiving the yearly evaluation of the President by the respective governing board. Section 5.7

Technical Changes

Clarifies the search committee composition, indicating that it shall be representative of the constituencies of the institution, with the number and constituency at the discretion of the governing board. Section 2.2.3

Clarifies language regarding distribution of Presidential position announcements. Section 2.2.4

Clarifies that non-classified employees be included in the list of groups that meets with and provides comments on finalists to the governing board. Section 2.2.5

Deletes redundant language. Old Section 2.3

Clarifies confidentiality expectations in a search and the conditions under which such confidentiality shall be waived regarding candidates. Section 2.4

Removes outdated language regarding the governance of West Virginia University Institute of Technology. Old Section 3.

Clarifies that contracts in place on the effective date of the revised rule may remain at the discretion of the governing board unless in violation of statute. Section 3.3

Clarifies the constituent groups who shall be represented in the evaluation process of Presidents. Section 5.2

Clarifies that non-classified employees are to be a part of the constituency from whom comments are solicited as part of the evaluation process. Section 5.3

Clarifies who is to receive presidential evaluations and adds the Chancellor to the list of persons receiving such evaluations. Section 5.4

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-5 - Guidelines for Governing Boards in Employing and Evaluating Presidents

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: Attention: Dr. Brian Noland, Chancellor
1018 Kanawha Boulevard, East, Suite 700, Charleston, WV 25301

Phone Number: 304-558-0699 Email: noland@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule has no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: 133-5 - Guidelines for Governing Boards in Employing and Evaluating Presidents c

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

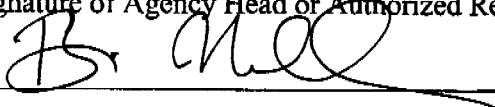
The rule has no fiscal impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: September 10, 2008

Signature of Agency Head or Authorized Representative



**West Virginia Higher Education Policy Commission
Meeting of September 10, 2008**

ITEM: Approval of Revision to Series 5, Guidelines for Governing Boards in Employing and Evaluating Presidents or Other Administrative Heads, Emergency Rule and Legislative Rule

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed revision to Series 5 as an emergency rule for submission to the Secretary of State.

Further Resolved, That the West Virginia Higher Education Policy Commission approves the proposed revision to Series 5 as a legislative rule for submission to the Secretary of State for a thirty-day public comment period.

Be it Further Resolved, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action at the conclusion of the comment period if no comments are received during the comment period.

STAFF MEMBER: Brian Noland

BACKGROUND:

During the August 23, 2008 meeting, the Commission approved Series 5, Guidelines for Governing Boards in Employing and Evaluating Presidents or Other Administrative Heads, as an emergency rule for filing with the Secretary of State's office as well as for submission to and approval from the Legislative Oversight Commission on Education Accountability (LOCEA). The Commission also granted approval for the rule to be promulgated as a legislative rule.

The emergency rule was submitted to LOCEA on August 25, 2008. Members of LOCEA requested that the proposed emergency rule be modified to delete the language regarding the selection process of the chair and vice chair of the presidential search committee. The deletion of Section 2.2.1. in the attached revised emergency rule reflects the proposed changes. Strike-throughs represent language to be deleted. The

proposed legislative rule, which is also attached, has been revised to reflect the modifications made to the emergency rule.

It is recommended that the Commission approve the amended version of Series 5 as an emergency rule for filing with the Secretary of State's office.

It is further recommended that the Commission approve the legislative rule for filing with the Secretary of State's office for a thirty-day public comment period. If no comments are received during the comment period, it is recommended that the Commission extend its final approval of the rule and that the rule be submitted to LOCEA for approval and final legislative action.