

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

Form #3

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2009 JAN -8 AM 11:47

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133-5

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

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TITLE 133  
~~PROCEDURAL~~ LEGISLATIVE RULE  
HIGHER EDUCATION POLICY COMMISSION

2009 JAN -8 AM 11:47

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

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

§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, ~~2~~.
- 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~~ 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 ~~s~~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 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. Input as to the best characteristics and qualities of the President should be solicited by the governing board of its constituencies and utilized in selecting 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 and evaluated 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 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 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,~~ Annually, ~~the~~ 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 or 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**

**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 80<sup>th</sup> and 20<sup>th</sup> 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 language requiring the governing board to seek input regarding the characteristics and qualities of a president from constituents as well as from members of the governing board. Section 2.2.1

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 2.2.2

Clarifies language regarding distribution of Presidential position announcements. Section 2.2.3

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 2.2.4

Clarifies that comments are to be solicited from the various constituents during the interview process and are to be evaluated by the governing board. Section 2.2.4

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.

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

Rule Title: \_\_\_\_\_

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

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: January 8, 2009

Signature of Agency Head or Authorized Representative

B. Miller

**West Virginia Higher Education Policy Commission  
Meeting of January 7, 2009**

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

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia Higher Education Policy Commission approves amendments to Series 5 as emergency and legislative rules for filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

**STAFF MEMBER:** Bruce Walker

**BACKGROUND:**

During the September 10, 2008 meeting, the Commission approved an amended version of Series 5, the legislative rule for the presidential search process, to be filed with the Secretary of State's office for a thirty-day public comment period. On the same date, an emergency version of the rule was approved by the Commission and went into effect.

Staff received comments from three individuals relating to various sections of the rule during the comment period, which are summarized below.

Comment: It was suggested that the Commission's search procedure be more clearly defined in the rule. (Section 2.2)

*Response: The rule requires institutions to submit a search procedure to the Commission. The Commission approves, but does not create, a search procedure. Institutional search procedures are representative of the institution's mission and the vision of the governing board and therefore, each search process may be very different in order to reflect the diversity of the system.*

Comment: A recommendation was offered to change the language in Section 2.2.1 to require the governing board to seek input on the statement of characteristics and qualities from various constituents in addition to the governing board. (Section 2.2.1)

*Response: The proposed change has been made to the rule.*

Comment: A recommendation was offered to add clarifying language to define the circumstances when a new president can be hired without a search. It was further recommended to add clarifying language to the constituency groups that will be included on the search committee, the number or individuals who will represent each group, and the process for selecting those individuals. It was suggested that faculty and students should be the only constituency groups represented on the search committee. (Section 2.2.2)

Response: *The rule requires a search procedure, which must address the use of a search committee, and must be approved by the Commission before a president can be hired. The constituency groups, number of representatives from each constituency group, and the process for selecting individuals is at the discretion of the institution as outlined in the search procedure.*

Comment: It was suggested that the language in Section 2.2.4 be changed to require the governing board to not only solicit comments from the campus community as a result of interviews with the finalists, but also to weigh those comments in making their final selection.

Response: *The proposed change has been made to the rule.*

Comment: A comment was received indicating that the process for background checks was not clear. (Section 2.2.5 and Section 2.4)

Response: *The process for background checks is clearly outlined in Section 2.2.5 of the rule and provides flexibility for the institution to perform this function. Section 2.4 of the rule relates to the public release of names and background of candidates rather than the actual background check.*

Comment: A comment was received inquiring if the search committee or the governing board conducts the interviews. (Section 2.2.4)

Response: *Institutional search procedures should define the process for conducting interviews.*

Comment: Concern was expressed regarding the Chancellor's role as an ex-officio member on all presidential search committees. An individual stated that it might not be the best use of the Chancellor's time, nor is direct oversight needed. Another individual suggested that the role of the Chancellor be at the discretion of the governing board. (Section 2.6)

Response: *According to statute, presidential selections require approval of the Commission. It is prudent that the Chancellor represent the Commission during*

*the selection process as the selection of a president is a major decision affecting institutional direction and the overall system of higher education.*

Comment: Concern was expressed regarding the Commission's approval of all presidential appointments. The commenter indicated that the Commission currently does not approve presidential appointments. (Section 2.6)

Response: *Consistent with statute, the Commission is required to approve the selection of all presidential appointments.*

Comment: A recommendation was received to delete the language that allows the Commission to conduct independent interviews of the finalists. The commenter was concerned that the additional interviews would interfere with the timeline. (Section 2.6)

Response: *The Commission would conduct any independent interviews within the timeline provided in the search procedure.*

Comment: A comment was received requesting that the governing board approve all forms of presidential compensation including service on a corporate board of directors. (Section 4.1)

Response: *The approval of compensation is handled through a contract process that is approved by the governing board and the Commission. Approving income not related to duties of the position is too restrictive and may include such activities as authoring books.*

Comment: An individual requested a definition of peer institutions and its relationship with higher education legislation. (Section 4.2)

Response: *Peer institutions are statutorily mandated in the West Virginia Code to be selected by the Commission. The Commission approved peer institutions at its November 30, 2007 meeting.*

Comment: An individual requested clarification of the first sentence in Section 4.2 regarding the use of sources in determining a president's salary. (Section 4.2)

Response: *Section 4.2 indicates that a president's salary should be based on a comparison of presidential salaries at peer institutions selected by the Commission. Institutions have a total of twenty peers, which provides a solid basis for determining presidential salaries. Although the peer institutions are a major source, other national data sources can also be utilized in determining a president's salary.*

Comment: A request was made to change the language in Section 4.2 to read that the peer institutions shall be defined by the institution instead of the Commission. (Section 4.2)

Response: *Peer institutions are statutorily mandated in the West Virginia Code to be selected by the Commission in consultation with the institutions.*

Comment: It was suggested that a time frame for presidential evaluations should be included. (Section 5.3 and 5.4)

Response: *The timeline for presidential evaluations appears in Section 5.1, which requires that a formal and structured evaluation shall be conducted every third year. The institutions have discretion regarding structured visits with the campus community and the presentation of the final report. In addition, a written evaluation is to be conducted annually.*

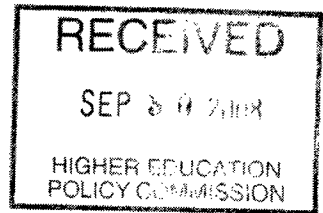
Comment: An individual requested a clearer definition of evaluation of presidents for "merit" purposes. (Section 5.5)

Response: *As outlined in the rule, the institutional board is to conduct an evaluation of the president as determined by the institutional board. There is no requirement for a "merit" rating.*

Comment: It was recommended that the results of presidential evaluations should appear in the minutes from the institutional board meetings, so that the public will be aware of the evaluative conclusions of the governing board. (Section 5.6)

Response: *Evaluations of employees are considered personnel actions not ordinarily made available to the public. A president should be treated the same as a faculty member or classified employee in relation to their evaluations and the non-disclosure of the details of those evaluations.*

It is recommended that the Commission approve the amended legislative rule for filing with the Secretary of State's Office and that the rule be submitted to the Legislative Oversight Commission on Education Accountability (LOCEA) for approval and further legislative action. It is also recommended that the Commission amend the emergency rule currently in effect and submit it to LOCEA for approval.



112 Morgan Dr.  
Morgantown, WV 26505  
September 29, 2008

Higher Education Policy Commission  
c/o Dr. Brian Noland, Chancellor  
1018 Kanawha Boulevard East, Suite 700  
Charleston, WV 25301

Re: Proposed Legislative Rule Series 5

I have the below concerns about the proposed rule.

Section 2.6. I do not believe that the Chancellor should serve as an ex officio non-voting member on any search committee at any institution. Responsibility for presidential searches should be delegated to institutional Board of Governors and the search committees appointed by them, operating under the parameters established in Series 5. It is not clear that serving on all committees is the best use of the Chancellor's time nor is the direct oversight suggested by this provision needed.

Section 4.1. Third sentence. I believe that governing board approval of other compensation including that received for serving on a corporate board of directors should be required. The current wording appears to make governing board approval of such compensation an optional matter, e.g., "may require approval..."

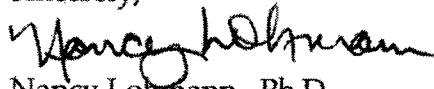
Section 4.2. The meaning of the first sentence is not completely clear. My understanding of this sentence is that while the salary of a president may be based on peer comparisons, other data may also be used.

It is important that data beyond that from the HEPC-designated peers be available when establishing salaries. I believe that the peer group for WVU consists of 20 institutions. The smaller the number on which comparisons are based, the greater the likelihood that extremes within the group will distort the conclusions reached. Using only 20 institutions would make the salary data potentially subject to distortion. Thus, in establishing salaries, it is important that governing board be able to consider data from the designated peers as well as other comparable institutions.

Section 5.6. The Rule appears to call for 1) an annual written evaluation, 2) an evaluation at the end of the initial contract period, which according to 3.2.1 may be at the end of the second year, and 3) a written and structured evaluation every three years. It would be helpful to indicate that all written evaluations are to be formally adopted by the governing board with the results available in minutes. Since there is no provision for stakeholder input in anything other than the formal and structured evaluation, it is important that stakeholders learn of the evaluative conclusions reached by the governing board.

Thanks you for considering my concerns.

Sincerely,

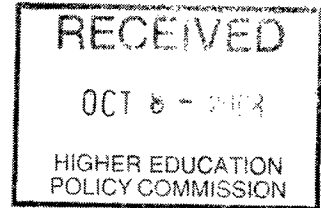
A handwritten signature in cursive script that reads "Nancy Lohmann". The signature is written in black ink and is positioned above the printed name.

Nancy Lohmann, Ph.D.



West Virginia University

College of Business and Economics



October 6, 2008

Chancellor Brian Noland  
Higher Education Policy Commission  
1018 Kanawha Boulevard East  
Suite 700  
Charleston, WV 25301

Dear Chancellor Noland: *Brian*

I wanted to thank you for your courtesy in meeting with the West Virginia University Faculty Senate this past August 21 to review the Emergency Rules for the Presidential Search process for West Virginia University. You were most gracious to spend the time with us and we were very appreciative of this, so thank you for that. We had a good meeting.

I also wanted to invite you to address the West Virginia University Faculty Senate either November 10 at 3:15, or December 8 at 3:15. Either date is fine from my perspective, but it would be perhaps more useful to have you come to the November meeting in terms of the timing of the upcoming legislative session. Thank you so much for considering this request.

As we discussed, I am writing to you with a formal discussion of the points that I would like to comment on regarding the Proposed Rule 5 change titled, "Guidelines for Governing Boards in Employing and Evaluating Presidents or Other Administrative Heads." My comments are as follows:

1. Section 2.2.1: Change "...A statement of characteristics and qualities..." to "Input as to the best characteristics and qualities of the President should be solicited by the governing board of its constituencies and utilized in selecting and evaluating the candidates." This requires the governing board to seek input on the characteristics of a best president from the constituents as well as the governing board members.
2. Section 2.2.4: "...comments shall be solicited by the governing board" should read "shall be solicited and evaluated by the governing board." This change suggests that the governing board must weigh the views of those who submitted input about the candidates.
3. Section 2.6: Suggest softening the statement, "The Chancellor shall serve as an ex officio, non-voting member on all search committees..." to "The Chancellor may serve as an ex officio, non-voting member on all search committees at the invitation of the governing board..." Thus, the Chancellor may guide at those schools that need guidance and seek it, but only do so at the discretion of the appropriate governing board.

**Division of Business Administration**

Phone: 304-293-7930  
Fax: 304-293-5652

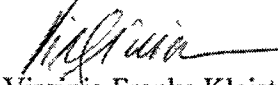
PO Box 6025  
Morgantown, WV 26506-6025

Equal Opportunity/Affirmative Action Institution

4. Section 2.6: Suggest removing the statement, "All presidential appointments shall be approved by the Commission." At present, the Commission does not approve presidential appointments, and it is my view that this change is unnecessary and cumbersome to the process.
5. Section 2.6: As we discussed in our meeting on August 21, I am very concerned that an interview with the final candidates near the end of the process could derail the timing of an important prospect who might be evaluating several offers in a short timeframe. Thus, would suggest striking, "The Commission reserves the right to conduct independent interviews of one or more finalists."
6. Section 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," change to "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 governing board."
7. Section 5.3: Please include a time frame for this requirement, such as annually.
8. Section 5.4: Please include a time frame for this requirement, such as annually.

Thank you so much for your consideration of my remarks. I will look forward to your reply regarding a visit to address the West Virginia University Faculty Senate in the near future. I appreciate this opportunity to comment on Proposed Rule Change, Series 5.

Best wishes,

  
Virginia Franke Kleist, PhD  
West Virginia University Faculty Senate Chair  
Associate Professor, Management Information Systems

**From:** Brian Noland  
**Sent:** Thursday, October 09, 2008 5:57 PM  
**To:** Maria Nova  
**Subject:** FW: Comments from Marshall University on Title 133 Series 5  
Please see below

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**From:** Tipler, Stephen [mailto:stipler@marshall.edu]  
**Sent:** Thursday, October 09, 2008 2:01 PM  
**To:** Brian Noland  
**Subject:** Comments from Marshall University on Title 133 Series 5

Dr. Brian Noland  
Chancellor  
West Virginia Higher Education Policy Commission

Chancellor Noland,

The Legislative Affairs Committee, and the Faculty Personnel Committee, at Marshall University have reviewed Title 133, Procedural Legislative Rule, Higher Education Policy Commission, Series 5. We suggest some modifications.

§133-5-2.2 - The search procedure that the Commission will create should be specified more clearly.

§133-5-2.2.1 ; §133-5-2.2.32 – A search committee should always be appointed when a new president is to be hired, and, if nothing else, clarifying language should be added that outlines a narrow range of circumstances when a new president would be hired without a search.

§133-5-2.2.2 – A more specific outline is needed of who selects faculty to participate on the committee and how many would be chosen. Being tenured is a possible criteria so that those serving on the committee do not feel pressured to make certain decisions, however the committee should be as diverse a group of faculty as possible.

§133-5-2.2.3(2) - What other constituencies of the institution does this cover? They need to be listed (removing 2.3) because they could be a controlling factor. The number and constituency of persons on the committee should be limited to not more than faculty, students.

§133-5-2.2.6(5) ; §133-5-2.4 – The background check process was confusing. In some cases it is in advance of a site visit, in other cases it would be at the time of an offer. On the one hand you don't want the expense of bringing in someone to interview that wouldn't qualify but on the other hand legal issues may come up if background checks are too early in the process.

§133-5-2.2.6(5)– Is the interviewing done by the search committee or governing board (which one?).

§133-5-5(4).2- Is the Commission to define the peer institutions? Does this agree with higher education legislation?

§133-5-6(5).5 - There should be a clearer definition of evaluation for meritorious. It is defined for faculty, therefore it should be defined for administration.

Stephen Tipler,  
Chairman, Legislative Affairs Committee,  
Marshall University

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