

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

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2001 SEP 28 P 2:59

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-1-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 9

TITLE OF RULE BEING PROPOSED: Academic Freedom, Professional Responsibility, Promotion, and
Tenure

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 October 30, 2001 AT 10:00 A.M. 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 Boulevard, 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

5620

TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
SERIES 9

FILED

SEP 28 P 2: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**TITLE: ACADEMIC FREEDOM, PROFESSIONAL RESPONSIBILITY,
PROMOTION, AND TENURE**

SECTION 1. GENERAL

- 1.1 Scope - This policy relates to academic freedom and responsibility, appointment, promotion, tenure, non-reappointment or dismissal of faculty, and grievance procedures for matters pertaining to faculty. The policy sets forth the major elements which need to be incorporated by institutional Boards of Governors as they formulate institutional policy relating to faculty issues. Each Board of Governors shall develop a policy on faculty matters for its institution as set forth in this Higher Education Policy Commission statement and shall file its policy with the Chancellor.
- 1.2 Authority - W. Va. Code § 18B-1-6 and 18B-1B-4
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. ACADEMIC FREEDOM AND PROFESSIONAL RESPONSIBILITY.

- 2.1. Academic freedom at public institutions of higher education in West Virginia under the jurisdiction of the Higher Education Policy Commission is necessary to enable the institutions to perform their societal obligation as established by the Legislature. The Commission recognizes that the vigilant protection of constitutional freedoms is nowhere more vital than in the institutions under its jurisdiction. Faculty members and students must always remain free to inquire, study, and evaluate.
- 2.2. Through the exercise of academic freedom, members of the academic community freely study, discuss, investigate, teach, conduct research, and publish, depending upon their particular role at the institution. To all of those members of the academic community who enjoy academic freedom, there are, commensurate with such freedom, certain responsibilities. All faculty members shall be entitled to full freedom in research and in the publication of the results of such research, subject to the adequate performance of their other academic duties, which may include designated instruction, research, extension service, and other professional duties. Activity for pecuniary return that interferes with one's obligations to the institution should be based upon an understanding,

reached before the work is performed, with the authorities of the institution. Further, each faculty member is entitled to freedom in the classroom in discussing the subject taught. In addition, when faculty members speak or write as citizens outside the institution, they shall be free from institutional censorship or discipline.

- 2.3. The concept of academic freedom is accompanied by an equally important concept of academic responsibility. The faculty member at a public institution of higher education in West Virginia is a citizen, a member of a learned profession, and a representative of an educational institution. As such, a faculty member, together with all other members of the academic community, has the responsibility for protecting, defending, and promoting individual academic freedom for all members of the community. The faculty member has the responsibility of contributing to institutional and departmental missions in teaching, research, and service as defined by the institution. The faculty member is responsible also as a teacher for striving to speak with accuracy and with respect for the similar rights and responsibilities of others. In speaking only as an individual or for a limited group, the faculty member should not imply or claim to be a spokesperson for the institution in which he or she holds an appointment.
- 2.4. In addition to meeting the primary responsibilities of addressing institutional missions in teaching, research, and service as defined by the institution, all faculty have an obligation to foster the quality, viability, and necessity of their programs. The financial stability of a program and recruitment of an adequate number of students depend in part on the faculty. The common goal of quality must be nurtured and responsibility for it shared by all. Integrity, objectivity, and service to the purposes and missions of the institution are expected.
- 2.5 Faculty interests and skills change, disciplines evolve, and new professions or fields of study emerge. All faculty members are responsible for remaining current in their disciplines. All are encouraged to explore opportunities for further developing a versatile range of knowledge and skills that are important to the institution. Through individual initiative and faculty development programs, faculty members are encouraged to grow in competency in their own disciplines and strengthen their interests in related fields.
- 2.6 As members of an academic community, faculty members also are expected to participate in decisions concerning programs and in program-review processes.

SECTION 3 FACULTY: RANKS AND DEFINITIONS.

- 3.1. The faculty at any state institution of higher education shall be those appointees of the institution's designee. The faculty are those so designated by the

institution and may include, but are not limited to, such professional personnel as librarians, faculty equivalents, academic professionals, and those involved in off-campus academic activities.

3.2. Faculty may fall into one of the following classifications:

3.2.1. Tenured: Those faculty members who have attained tenure status as determined by the institution. Normally, tenured appointments are full-time (1.00 FTE or the equivalent, as determined by the institution) for the academic year.

3.2.1.1. Under special circumstances, if requested by the faculty member and approved, a full-time tenured appointment may be converted to a part-time tenured appointment for a specified time period, normally not to exceed one calendar year. At the conclusion of the approved time period or an approved extension thereof, the faculty member will return to a full-time tenured appointment or, if the faculty member chooses not to return to a full-time tenured appointment, the faculty member's employment will cease. This section does not apply to actions associated with phased retirement programs.

3.2.2. Tenure-Track: Those faculty members who have been appointed on a full-time (1.00 FTE or the equivalent, as determined by the institution) basis and have been designated as being in a tenure-track position.

3.2.2.1. Under special circumstances, if requested by the faculty member and approved, a full-time tenure-track appointment may be converted to a part-time tenure-track appointment for a specified time period, normally not to exceed one calendar year. At the conclusion of the approved time period or extension thereof, the faculty member will return to a full-time tenure-track appointment or, if the faculty member chooses not to return to a full-time tenure-track appointment, the faculty member's employment will cease. Time spent in a part-time tenure-track appointment will not normally apply to the calculation of the years of service for the purposes of tenure nor will it result in any de facto award of tenure.

3.2.3. Clinical-Track: Those faculty members who have been appointed and have been designated as being in a clinical-track position. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.

- 3.2.4. Librarian-Track: Those faculty members who have been appointed and have been designated as being in a librarian-track position. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time.
- 3.2.5. Term: Those faculty members at community and technical colleges who have been appointed for a specified term as defined by the institution. The appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time. While a full-time term faculty member is eligible to receive reappointment to additional terms, no single term may exceed three years. No number of term appointments shall create any presumption of a right to appointment as tenure-track or tenured faculty.
- 3.2.6. Non-tenure-Track: Those faculty members who have not been appointed in a tenure-track, clinical-track, librarian-track, term, or tenured status. Their appointment may be full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time. Non-tenure-track faculty may also include faculty equivalents or academic professionals, whose primary duties are non-instructional, but who may hold a secondary appointment that is instructional in character. No number of Non-tenure-track appointments shall create any presumption of a right to appointment as tenure-track or tenured faculty.
- 3.3. Faculty appointed to tenured, tenure-track, or term positions at any institution shall be appointed in one of the following ranks:
 - 3.3.1. Professor;
 - 3.3.2. Associate Professor;
 - 3.3.3. Assistant Professor; or
 - 3.3.4. Instructor
- 3.4. Faculty appointed to clinical-track positions at any institution may be appointed to one of the following ranks:
 - 3.4.1. Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN);
 - 3.4.2. Associate Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN);
 - 3.4.3. Assistant Professor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN); or
 - 3.4.4. Instructor, with the designation of School of Medicine (SM), School of Dentistry (SD), or School of Nursing (SN)

- 3.5. Faculty appointed to librarian-track positions at any institution may be appointed to one of the following ranks:
 - 3.5.1. Librarian or Professor/Librarian;
 - 3.5.2. Associate Librarian or Associate Professor/Librarian;
 - 3.5.3. Assistant Librarian or Assistant Professor/Librarian; or
 - 3.5.4. Staff Librarian or Instructor/Librarian
- 3.6. Clinical-track, librarian-track, and term faculty hold appointments that are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. Clinical-track, librarian-track, and term faculty appointments are only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.
- 3.7. Additional ranks are permitted at West Virginia University and West Virginia State College through the use of the title prefix designation "extension;" such additional ranks are excluded from and in addition to those ranks covered by the provisions of the West Virginia Code.
- 3.8. Other appropriate titles which more accurately indicate the nature of the position may be used.
- 3.9. Persons assigned full-time or part-time to administrative or staff duties at any institution may be appointed to, or may retain, one of the foregoing faculty ranks in addition to any administrative or staff title, following consultation with appropriate academic units. Such persons will be informed in writing at the time of the appointment whether the faculty rank is as a tenured, tenure-track, clinical-track, librarian-track, term, or non-tenure-track member of the faculty. Administrative or staff personnel who are not appointed to a faculty position are not faculty and therefore are not entitled to the protections provided by this policy.
- 3.10. Clinical-track, librarian-track, term, and Non-tenure-track faculty at all institutions hold non-tenurable appointments which may be part-time or full-time and are not subject to consideration for tenure, regardless of the number, nature, or time accumulated in such appointments. These appointments are for a specified period of time as set forth in the notice of appointment. Since the faculty member thus appointed is not on the tenure track, the notice provisions set out in Section 10.5 below do not apply.
- 3.11. Non-tenure-track appointments shall have one of the following titles:
 - 3.11.1. Any of the faculty ranks, but designated visiting, research, clinical, extension, or adjunct, as applicable to describe the connection or function;

- 3.11.2. Lecturer or senior lecturer;
 - 3.11.3. Assistant, designated as graduate, research, clinical, or adjunct, as applicable to describe the connection or function.
- 3.12. Non-tenure-track full-time (1.00 FTE or the equivalent, as determined by the institution) faculty appointments may be used only if one or more of the following conditions prevail:
- 3.12.1. The position is funded by a grant, contract, or other source that is not a part of the regular and on-going source of operational funding.
 - 3.12.2. The appointment is for the temporary replacement of an individual on sabbatical or other leave of absence. Such appointments are outside tenure-track status, are subject to annual renewal, and normally may not exceed three years.
 - 3.12.3. The appointment is for the purpose of filling an essential teaching post immediately, pending a permanent appointment through a regular search and screening process. Such appointments are outside tenure-track status, are subject to annual renewal, and normally may not exceed three years.
 - 3.12.4. The position is temporary to meet transient instructional needs, to maintain sufficient instructional flexibility in order to respond to changing demand for courses taught, or to meet other institutional needs. The appointee is to be so notified at the time of the appointment. Such appointments are outside tenure-track status, are subject to annual renewal, and normally may not exceed six years.
 - 3.12.5. The appointee is granted a primary appointment as an administrator or to perform other non-instructional duties, with a secondary appointment that is instructional in character. Any faculty rank or teaching would be considered temporary, renewable on an annual basis. The appointee must be notified in writing of the status of any faculty rank.
 - 3.12.6. Appointment or reappointment to a Non-tenure-track full-time faculty position shall create no right or expectation of continued appointment beyond the one-year period of appointment or reappointment.
- 3.13. The institution shall make all tenured, tenure-track, clinical-track, librarian-track, term, and Non-tenure-track appointments after consultation with appropriate

faculty and other collegiate units.

- 3.14. Every faculty contract at any institution shall be for one fiscal year, or part thereof, in accordance with and in compliance with the annual budget of the institution, or supplementary actions thereto, as provided by law.
- 3.15. Every such contract shall be in writing, and a copy of the document shall be furnished to the person appointed. Such document shall contain the terms and conditions of the appointment, as delineated in Section 17 of this policy.

SECTION 4. FACULTY: TYPES AND CONDITIONS OF APPOINTMENT.

- 4.1. Full-time appointments to the faculty of an institution, other than those designated as clinical-track, librarian-track, term, or Non-tenure-track, shall be either tenured or tenure-track.
- 4.2. All clinical-track, librarian-track, term, and other Non-tenure-track appointments, as defined in Section 3 of this policy shall be neither tenured or tenure-track, but shall be appointments only for the periods and for the purposes specified, with no other interest or right obtained by the person appointed by virtue of such appointment.
- 4.3. The appointment of a person to a full-time position at any institution is made subject to the following conditions:
 - 4.3.1. The appointee shall render full-time service to the institution to which appointed. Outside activities, except the practice of medicine or dentistry which are restricted below in subsection 4.3.2, shall not be restricted unless such activities or employment interfere with the adequate performance of institutional duties. The institution expects its faculty to give full professional effort to assignments of teaching, research and service. It is, therefore, considered inappropriate to engage in gainful employment outside the institution that is incompatible with the faculty member's contractual commitment to the institution. Moreover, it is considered inappropriate to transact personal business from one's institutional office when it interferes with institutional duties and responsibilities. The institution shall establish a program of periodic review of outside services of appointees to guide faculty members.
 - 4.3.2. Full-time faculty appointments assigned to respective dental or medical schools will render dental and medical patient services only at facilities affiliated with their assigned institution, or at such other locations or facilities as may be authorized in their annual notice of appointment, or as otherwise approved in writing by the institution.

4.3.2.1. Fees for professional patient related services rendered by full-time medical and dental faculty appointees shall be billed, collected and expended in accordance with the bylaws of the faculty practice plan for their respective institution, or through such other billing and collection mechanism as may be provided for in the faculty member's annual notice of appointment, or as otherwise approved in writing by the institution.

4.3.2.2. Fees for professional services not directly related to patient services including, but not limited to, royalties, honoraria, legal actions where no patient services have been rendered, or other such similar sources as may be approved in writing by the institution are permitted as individual income to the individual faculty member.

4.3.3. If outside employment or service interferes with the performance of the regular institutional duties and responsibilities of the appointee, the institution has a right to (a) require the appointee to cease such outside employment or service which interferes with institutional duties and responsibilities of the appointee, (b) make such adjustments in the compensation paid to such appointee as are warranted by the appointee's services lost to the institution and by the appointee's use of institutional equipment and materials, or (c) dismiss for cause as set out in Section 12 below.

4.3.4. Institutions may permit and encourage a reasonable amount of personal professional activity, such as consulting, by a faculty member outside the faculty member's duties and responsibilities of employment by and for the institution, provided such activity: (1) further develops the faculty member professionally and (2) does not interfere with duties and responsibilities to the institution.

4.4. If the status of a faculty member changes from Non-tenure-track, clinical-track, librarian-track, or term to tenure-track, the time spent at the institution may, at the discretion of the institution, be counted as part of the tenure-track period.

SECTION 5. JOINT INSTITUTIONAL APPOINTMENTS.

5.1. Faculty members may be appointed to perform academic duties at two or more public institutions of higher education in West Virginia, which duties may include teaching, research, counseling, or other services. For administrative purposes, one institution shall be designated the faculty member's "home institution," which institution shall be responsible for granting promotions, raises in salary, and tenure: Provided, however, that when cause therefore shall occur,

appropriate counseling, disciplinary action, and the like shall be the responsibility of the institution where the occurrence arose.

- 5.2. The conditions and the details of the faculty member's joint appointment, including the designation of the "home institution," and any other arrangements, shall be specified in the agreement between the faculty member and the institutions sharing the faculty member's services. A joint appointment will be made only with consent of the faculty member.
- 5.3. Full-time faculty members appointed under joint or contractual appointments shall continue to be considered full-time employees of the "home institution."

SECTION 6. EMERITUS STATUS.

- 6.1. Emeritus status is an honorary title that may be awarded to a retiring faculty member or administrator for extended meritorious service. Each institution shall establish a policy regarding emeritus status and file the policy with the Policy Commission. There is no salary or emolument attached to the status other than such privileges as the institution may wish to extend.

SECTION 7. PROMOTION IN RANK.

- 7.1. Within the following framework, each institution shall establish, in cooperation with the faculty or duly-elected representatives of the faculty, guidelines and criteria for promotion in rank for tenured, tenure-track, clinical-track, librarian-track, term, and non-tenure track faculty:
 - 7.1.1. There shall be demonstrated evidence that promotion is based upon a wide range of criteria, established by the institution in conformance with this document and appropriate to the mission of the institution. Examples appropriate to some institutions might be: excellence in teaching; publications and research; professional and scholarly activities and recognition; accessibility to students; adherence to professional standards of conduct; effective service to the institution, college, or department; significant service to the community; experience in higher education and at the institution; possession of the earned doctorate, special competence, or the highest earned degree appropriate to the teaching field; continued professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to promotion shall rest with the institution.
 - 7.1.2. There shall be demonstrated evidence that, in the process of making evaluations for promotions, there is participation of persons from several

different groups, such as: peers from within and without the particular unit of the institution, supervisory administrative personnel such as the department/division chairperson and the dean, and students.

7.1.3. There shall be no practice of granting promotion routinely or solely because of length of service, or of denying promotion capriciously.

7.1.4. The institution shall provide copies of its institutional guidelines and criteria for promotion to the Policy Commission and shall make available such guidelines and criteria to its faculty.

7.2. Promotion shall not be granted automatically, but shall result from action by the institution, following consultation with the appropriate academic units.

SECTION 8. FACULTY RESIGNATIONS.

8.1. A faculty member desiring to terminate an existing appointment during or at the end of the academic year, or to decline re-appointment, shall give notice in writing at the earliest opportunity. Professional ethics dictate due consideration of the institution's need to have a full complement of faculty throughout the academic year.

SECTION 9. TENURE.

9.1. Tenure is designed to ensure academic freedom and to provide professional stability for the experienced faculty member. It is a means of protection against the capricious dismissal of an individual who has served faithfully and well in the academic community. Continuous self-evaluation, as well as regular evaluation by peer and administrative personnel, is essential to the viability of the tenure system. Tenure should never be permitted to mask irresponsibility, mediocrity, or deliberate refusal to meet academic requirements or professional duties and responsibilities. Tenure applies to those faculty members who qualify for it and is a means of making the profession attractive to persons of ability. There shall be demonstrated evidence that tenure is based upon a wide range of criteria such as: excellence in teaching; publications and research; professional and scholarly activity and recognition; accessibility to students; adherence to professional standards of conduct; effective service to the institution, college and department; significant service to the community; experience in higher education and at the institution; possession of the earned doctorate, special competence, or the highest earned degree appropriate to the teaching field; continued professional growth; and service to the people of the State of West Virginia. Ultimate authority regarding the application of guidelines and criteria relating to tenure shall rest with the institution.

- 9.2. In making tenure decisions, careful consideration shall be given to the tenure profile of the institution, projected enrollment patterns, staffing needs of the institution, current and projected mission of each department/division, specific academic competence of the faculty member, and preservation of opportunities for infusion of new talent. The institution shall be mindful of the dangers of losing internal flexibility and institutional accountability to the citizens of the State as the result of an overly tenured faculty.
- 9.3. For community and technical colleges, in order to be fully responsive to the changing needs of their students and clients, the goal in the appointment of faculty is to limit the number of tenured and tenure-track faculty to no more than twenty percent of full-time faculty employed by the respective community and technical college.
 - 9.3.1. At community and technical colleges, full-time term faculty are eligible for reappointment, although no number of appointments shall create any presumption of the right to appointment as tenure-track or tenured faculty. A single appointment shall not exceed three years.
 - 9.3.2. The employment standing of tenured and tenure-track faculty holding appointment at each of the community and technical colleges at the time of the implementation of this policy shall not be affected.
- 9.4. Tenure shall not be granted automatically, or solely because of length of service, but shall result from action by the institution, following consultation with appropriate academic units.
- 9.5. Tenure may be granted at the time of the appointment by the institution, following consultation with appropriate academic units.
- 9.6. Tenure may be attained only by faculty who hold the rank of Assistant Professor or above.
- 9.7. A faculty member who has been granted tenure shall receive yearly renewals of appointment unless dismissed or terminated for reasons set out in Sections 12, 13, or 14 below.

SECTION 10. TENURE-TRACK STATUS.

- 10.1. When a full-time faculty member is appointed on other than a clinical-track, librarian-track, term, or non-tenured-track or tenured basis, the appointment shall be tenure-track.
- 10.2. During the tenure-track period, the terms and conditions of every reappointment shall be stated in writing, with a copy of the agreement furnished the individual

concerned.

- 10.3. The maximum period of tenure-track status normally shall not exceed seven years. Before completing the penultimate year (the "critical year") of a tenure-track appointment, any non-tenured faculty member shall be given written notice of tenure, or offered a one-year written terminal contract of employment. During the tenure-track period, faculty members may be granted tenured appointment before the sixth year of service, such appointment to be based upon criteria established by the institution and copies provided to the Policy Commission.
 - 10.3.1. Institutions may establish policies to accommodate unusual situations, such policies to be approved by the Governing Board and reported to the Policy Commission.
- 10.4. During the tenure-track period, contracts shall be issued on a year-to-year basis, and appointments may be terminated at the end of the contract year. During said tenure-track period, notices of non-reappointment may be issued for any reason that is not arbitrary, capricious, or without factual basis. Any documented information relating to the decision for non-retention or dismissal shall be provided promptly to the faculty member upon request.
- 10.5. After the decision regarding retention or non-retention for the ensuing year has been made by the institution's president or designee, the tenure-track faculty member shall be notified in writing of the decision:
 - 10.5.1. By letter post-marked and mailed no later than March 1 of the first academic year of service;
 - 10.5.2. By letter post-marked and mailed no later than December 15 of the second academic year of service; and
 - 10.5.3. By letter post-marked and mailed at least one year before the expiration of an appointment after two or more years of service in the institution.
 - 10.5.4. Notice of non-retention shall be mailed "Certified Mail-Return Receipt Requested."
 - 10.5.5. Failure to provide timely notice of non-retention to tenure-track faculty would lead to the offer of renewal of appointment for an additional year, but would not prejudice further continuation after that additional year.
- 10.6. Faculty appointed at times other than the beginning of the academic year may

choose to have those periods of appointment equal to or greater than half an academic year considered as a full year for tenure purposes only. Tenure-track appointments for less than half an academic year may not be considered time in probationary status.

- 10.7. Following receipt of the notice of non-retention, the faculty member may appeal such non-retention decision by requesting a statement of reasons and then filing a grievance as provided in Section 15 of this policy. The request for a statement of reasons shall be in writing and mailed to the president or designee within ten working days of receipt of the notice of non-retention.

SECTION 11. FACULTY EVALUATION.

- 11.1. All faculty shall receive a yearly written evaluation of performance directly related to duties and responsibilities as defined by the institution.
- 11.2. Evaluation procedures shall be developed at the institutional level, and a copy sent to the Policy Commission and filed in the Central Office. Such procedures must be multidimensional and include criteria such as peer evaluations, student evaluations, and evaluations by immediate supervisors.

SECTION 12. DISMISSAL.

- 12.1. Causes for Dismissal: The dismissal of a faculty member shall be effected only pursuant to the procedures provided in these policies and only for one or more of the following causes:
 - 12.1.1. Demonstrated incompetence or dishonesty in the performance of professional duties, including but not limited to academic misconduct;
 - 12.1.2. Conduct which directly and substantially impairs the individual's fulfillment of institutional responsibilities, including but not limited to verified instances of sexual harassment, or of racial, gender-related, or other discriminatory practices;
 - 12.1.3. Insubordination by refusal to abide by legitimate reasonable directions of administrators;
 - 12.1.4. Physical or mental disability for which no reasonable accommodation can be made, and which makes the faculty member unable, within a reasonable degree of medical certainty and by reasonably determined medical opinion, to perform assigned duties;

- 12.1.5. Substantial and manifest neglect of duty; and
 - 12.1.6. Failure to return at the end of a leave of absence.
- 12.2. Notice of Dismissal for Cause: The institution shall initiate proceedings by giving the faculty member a written dismissal notice by certified mail, return receipt requested, which dismissal notice shall contain:
- 12.2.1. Full and complete statements of the charge or charges relied upon; and
 - 12.2.2. A description of the appeal process available to the faculty member.
- 12.3. Prior to giving the faculty member a written dismissal notice, the institution shall notify the faculty member of the intent to give the written dismissal notice, the reasons for the dismissal, and the effective date of the dismissal. The faculty member shall have an opportunity to meet with the institutional designee prior to the effective date to refute the charges.
- 12.4. Faculty who refuse to sign or execute an offered annual contract or notice of appointment or reappointment by the date indicated by the institution for its execution, or who fail to undertake the duties under such document at a reasonable time, shall be deemed to have abandoned their employment with the institution and any rights to tenure or future appointment. Faculty objecting to terms of such document do not waive their objections to such terms by signing or executing the document.

SECTION 13. TERMINATION BECAUSE OF REDUCTION OR DISCONTINUANCE OF AN EXISTING PROGRAM.

- 13.1. A tenured or tenure-track faculty member's appointment may be terminated because of the reduction or discontinuance of an existing program at the institution as a result of a review of the program, in accordance with the appropriate rule relating to review of academic programs, provided no other program or position requiring equivalent competency exists. If, within two years following the reduction or discontinuance of a program, a position becomes vacant for which the faculty member is qualified, the institution shall make every effort to extend first refusal to the faculty member so terminated.
- 13.1.1. Every effort should be made to reassign an individual to instructional or non-instructional duties commensurate with the faculty member's training and experience, and offers of release time or leaves of absence should be made to enable such persons to acquire capabilities in areas in which their services

would be required by the institution. Faculty development programs and funds should be used to facilitate such reassignments.

- 13.2. Institutional policy for accommodating major reduction in, or discontinuance of, an existing program shall be developed through a collaborative assessment by representatives of administration and faculty, approved by the governing board, and reported to the Policy Commission prior to implementation. Institutions should utilize appropriate program change policies.
- 13.3. Notice of Non-retention Because of Program Reduction or Discontinuance: The institution shall initiate proceedings by giving a faculty member written notice of such non-retention by certified mail, return receipt requested.
- 13.4. The dates of formal notification for tenured and tenure-track faculty shall be those specified in Section 10 of this policy.

SECTION 14. TERMINATION DUE TO FINANCIAL EXIGENCY.

- 14.1. Termination of Employment Due to Financial Exigency: A faculty member's appointment may be terminated because of a financial exigency, as defined and determined by the institution's Governing Board. Institutional plans for meeting a financial exigency shall be developed through a collaborative assessment by representatives of administration and faculty, approved by the governing board, and reported to the Policy Commission prior to implementation. Institutions should utilize appropriate program change policies.
- 14.2. Notice of Termination Due to Financial Exigency: The institution shall initiate proceedings by giving the faculty member written notice of termination by certified mail, return receipt requested, which notice shall contain:
 - 14.2.1. A delineation of the rationale used for the determination of a financial exigency;
 - 14.2.2. A copy of the implementation procedures used by the institution related to the financial exigency and a delineation of the rationale used for the termination of the faculty member; and
 - 14.2.3. A description of the appeal process available to the faculty member.
- 14.3. To the extent financially feasible, the dates of formal notification for tenured and tenure-track faculty shall be those specified in Section 10 of this policy.

SECTION 15. FACULTY GRIEVANCE PROCEDURE.

- 15.1. A faculty member wishing to grieve or appeal any action of the institution or Governing Board may utilize the procedures set out in W. Va. Code §29-6A.

SECTION 16. INFORMAL PROCEDURES FOR CONFLICT RESOLUTION.

- 16.1. Each institution may provide alternative procedures to those set out in West Virginia Code §29-6A for the resolution of conflicts.

SECTION 17. NOTIFICATION OF TERMS AND CONDITIONS OF FACULTY APPOINTMENTS

- 17.1. Institutions have a large measure of flexibility in determining the form and style whereby faculty are notified each year of the terms of their appointment. When an initial appointment is made, however, or when the conditions of the appointment change, it is crucial that the faculty member be fully informed of the terms and conditions of employment. While a formal contract may not be necessary each year, the institution may choose one of several means of notifying faculty about their appointments: a personal letter, a formal contract, or a combination of a letter with a standard contract attached.

- 17.1.1 Community and technical colleges may offer each year to their full-time term faculty contracts of up to three years duration, subject to the conditions stated in Sections 3, 4 and 9 of this policy.

- 17.2. The letter of appointment or contract should state the following:

- 17.2.1. That the appointment (to the specified position) is offered in accordance with the provisions of institutional policy, and (if applicable) of the institution's faculty handbook or other publication.

- 17.2.2. That the appointment is tenured, tenure-track, clinical-track, librarian-track, term, or Non-tenure-track as defined in this policy.

- 17.2.3. That the rank (in case of a tenured, clinical-track, term, or tenure-track appointment) is Professor, Associate Professor, Assistant Professor, or Instructor, including a clinical-track designation, as appropriate, or

- 17.2.4. That the rank (in case of a librarian-track appointment) is Librarian or Professor/Librarian, Associate Librarian or Associate Professor/Librarian. Assistant Librarian or Assistant

- Professor/Librarian, or Staff Librarian or Instructor/Librarian.
- 17.2.5. That the appointment is full-time (1.00 FTE or the equivalent, as determined by the institution) or part-time with the FTE identified.
 - 17.2.6. That it is a terminal contract (whenever appropriate).
 - 17.2.7. That it is a joint appointment with another institution (whenever appropriate), with the home institution specified.
 - 17.2.8. The beginning and ending dates of the appointment.
 - 17.2.9. For tenure-track appointments, the academic year in which tenure must be awarded (the "critical year").
 - 17.2.10. The total salary for the appointment.
 - 17.2.11. That, consistent with the provisions of this policy, employment is subject to the fulfillment of the duties and responsibilities of the position.
 - 17.2.12. That the specific assignments of the position will be determined by the institution.
 - 17.2.13. That any special conditions which are included in the appointment be made a part of the contract only if they are signed by the faculty member and the designated representative of the institution.
 - 17.2.14. That acceptance of the appointment will be specified by the faculty member's signing, dating, and returning a copy of the letter or contract to the designated representative of the institution within a reasonable time, which should be specified.
- 17.3. Renewal letters, or letters that simply inform the faculty member of a change in salary, need not contain all of the information listed above, but it is appropriate to refer to the earlier letter or contract.

SUMMARY

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

SERIES 9

**ACADEMIC FREEDOM, PROFESSIONAL RESPONSIBILITY,
PROMOTION, AND TENURE**

This policy relates to academic freedom and responsibility, appointment, promotion, tenure, non-reappointment or dismissal of faculty, and grievance procedures for matters pertaining to faculty. The policy sets forth the major elements which need to be incorporated by institutional Boards of Governors as they formulate institutional policy relating to faculty issues. Each Board of Governors shall develop a policy on faculty matters for its institution as set forth in this Higher Education Policy Commission statement and shall file its policy with the Chancellor

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-9: Academic Freedom, Professional Responsibility, and Tenure

Type of Rule: Legislative Interpretive 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 cost to implementation of this rule. It is procedural.

3. Objectives of These Rules:

To give guidance to institutional governing boards for developing policies related to faculty matters of the institutions.

Rule Title: 133-9: Academic Freedom, Professional Responsibility, Promotion and Tenure

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: September 28, 2001

Signature of Agency Head or Authorized Representative:

J. Michael Muller