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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: AUTHORIZATION OF DEGREE GRANTING
INSTITUTIONS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4603

SECTION 18B-17-2(d), PASSED ON March 7, 2006

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: March 31, 2006


Authorized Signature

47.20

TITLE 133

LEGISLATIVE RULE

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 20

AUTHORIZATION OF DEGREE GRANTING INSTITUTIONS

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WEST VIRGINIA
SECRETARY OF STATE

§133-20-1. GENERAL

- 1.1. Scope: This rule establishes the policy regarding accreditation and approval of degree-granting institutions which offer degrees above the associate level.
- 1.2. Authority: W. Va. Code §18B-4-7
- 1.3. Filing Date: March 31, 2006
- 1.4. Effective Date: March 31, 2006
- 1.5. Repeal of Former Rule: Repeals and replaces Title 133, Series 20 which had an effective date of August 10, 2002.

§133-20-2. PURPOSE

- 2.1 The West Virginia Higher Education Policy Commission is responsible for the approval of any institution, association or organization within the state which desires to offer programs or courses of higher learning in the State of West Virginia. Prior to offering any course or degree program above the associate level in the State, the entity shall apply to the Commission for authorization to operate in the State. The Commission shall consult with the West Virginia Council for Community and Technical College Education when an entity desires to offer associate level programs in addition to courses and programs above the associate level. The provisions of this rule shall also apply to any course or programs delivered in the State by an out-of-state institution via distance education-based instruction if the institution will have a physical presence in the State.

§133-20-3. DEFINITIONS

- 3.1 "Commission" means the West Virginia Higher Education Policy Commission.
- 3.2 "Council" means the West Virginia Council for Community and Technical College Education.
- 3.3 "Institution of higher education" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:

- offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward a degree; or
 - operates a facility as a college or university or other entity of whatever kind which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or
 - uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.
- 3.4 "Degree" means any earned award conferred by a higher educational institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.
- 3.5 "Degree program" means a curriculum or course of study of greater duration than eleven months of full-time study in a discipline or field that leads to a degree.
- 3.6 "Course" means a formally organized, structured series of meetings open to the general public for which a fee is charged, and for which credit toward a degree either is awarded or may reasonably be understood to be applicable to a degree with the intent of imparting information or understanding at a level appropriate to a postsecondary audience.
- 3.7 "Distance education" means the delivery of any course or degree programs by which the primary mode of delivery to a site is television, videocassette, film, computer or other telecommunications devices.
- 3.8 "Physical Presence" means an institution employs in West Virginia any person or persons for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring organization. Such activity would include advertising, promotional material, or public solicitation in any form that targets West Virginia residents through distribution or advertising in the State. In addition, the institution has physical presence in West Virginia if it delivers, or plans to deliver, instruction in West Virginia, and receives assistance from any other organization within the state in delivering the instruction, such as, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.
- 3.9 "Private college or university" means an institution which is "doing business or maintaining a place of business in the State of West Virginia" which offers courses of instruction or study wherein credits may be earned toward a degree in a field of endeavor. A publicly-supported college or university in another state will be treated as a "private college or university" and will be authorized to offer courses of instruction toward a degree, degree credits, or degrees if it qualifies under the criteria for such institutions. An institution that employs an agent or representative in West Virginia and delivers instruction by any means within the State shall be regarded as a private college or university and shall be authorized on the same basis as any other such institution.

§133-20-4. EXEMPTIONS

- 4.1 The provisions of the rule shall not be applicable to the following institutions:
- 4.1.1 Any existing institutions of higher education approved to operate in West Virginia prior to July 1, 2006. Should any such institution, as the result of a change of ownership, or operational status from a non-profit to a for-profit institution, be required to modify its accreditation status from the Higher Learning Commission of the North Central Association, such institution must secure approval for the change(s) from the Higher Education Policy Commission.
- 4.1.2 Correspondence, business, occupational and trade schools which
- (a) offer nothing higher than a specialized associate degree,
 - (b) typically do not pursue regional accreditation, and
 - (c) are regulated under West Virginia Code provisions (18B-2B-9) on correspondence, business, occupational and trade schools.
- 4.1.3 Out-of-state institutions:
- (a) offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the state institution;
 - (b) offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, or
 - (c) offering courses or programs on a military installation solely for military personnel or civilians employed on such installation.
- 4.2 Each institution of higher education which claims to be exempt under the provisions of this section must file with the Commission such information as may be required by the Commission to determine whether the institution is exempt. If the Commission determines that any institution is not exempt from the provisions of this rule, it shall notify the institution in writing with the reasons for the determination.

§133-20-5. PROHIBITIONS

- 5.1 No person, firm, association, institution, trust corporation or other entity shall use in any manner within West Virginia the term "college" or "university" or any abbreviation thereof, or any words or terms tending to designate it as, or create the impression that it is an institution of higher education, unless it shall have obtained the appropriate approval as provided in this rule.
- 5.2 This section shall not apply to any entity which used the term "college" or "university" prior to July 1, 2006.
- 5.3 This section shall not apply to individual proprietorships, associations, co-

partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree granting programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

§133-20-6. AUTHORIZATION TO OPERATE

- 6.1 An institution locating in West Virginia must register with the Secretary of State's office prior to making any application to the Commission for authorization.
- 6.2 All private colleges and universities, private proprietary schools and seminaries or Bible colleges offering any degree above the associate level shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.
- 6.3 All private colleges and private proprietary schools, with the exception of correspondence, business, occupational, and trade schools as defined in Series 35, *Correspondence, Business, Occupational and Trade Schools*, of the Council for Community and Technical College Education, offering degrees not above the associate level shall register with the Council, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.
- 6.4 Private colleges and universities and private proprietary schools offering associate level degrees and degrees above the associate level shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services. Granting of authorization of such institution is the responsibility of the Higher Education Policy Commission in consultation with the Council for Community and Technical College Education.
- 6.5 Private colleges or universities and seminaries or Bible colleges shall be authorized under the provision of this rule. Private proprietary schools exempted under the provisions of section 4 of this rule shall be governed by the provisions of Title 135, Series 35, *Correspondence, Business, Occupational and Trade Schools*, administered by the Council.
- 6.6 Authorization is limited to those institutions that deliver instruction in West Virginia and have a physical presence in West Virginia.

§133-20-7. GRANTING OF AUTHORIZATION AND BOND REQUIREMENTS

- 7.1 Authorization shall be granted upon presentation of adequate information by the postsecondary institution seeking authorization to the Commission. As the first step toward authorization, representatives of a seminary or Bible college or a private college or university shall consult with the Director of Academic Affairs or

designee prior to submission of required documentation. No private college or university shall operate until it meets the essential conditions established by the Commission and defined in this rule.

- 7.2 No private college or university shall operate until its accreditation is documented or its potential for accreditation is established and accepted by the Commission. Institutions authorized to operate pending full accreditation shall pursue full accreditation continuously and shall make reasonable and timely progress toward accreditation in order to retain authorization.
- 7.3 No seminary or Bible college shall operate until the religious nature of the institution is documented and verified by the Commission.
- 7.4 Before an institution of higher education is authorized under the provisions of section 10.7 of this rule, a surety bond must be provided by the institution. The obligation of the bond will be that the institution, its officers, agents and employees will faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the state. The bond shall be to the Commission in such form as approved by the Commission and is to be used only for payment of a refund of tuition and other instructional fees due a student or potential student. The amount of the bond shall be \$50,000 and shall be renewed annually. The Commission, if it deems appropriate, may reduce the amount of the bond if an institution has less unearned tuition than \$50,000, but in no event shall be less than \$10,000.

§133-20-8. CRITERIA FOR AUTHORIZATION – SEMINARY OR BIBLE COLLEGE

- 8.1 To qualify as a seminary or Bible college, an institution must qualify both as an institution of higher education as defined in section 3 of this rule and as a religious institution based on meeting each of the following criteria.
 - 8.1.1 Be a non-profit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a non-profit religious corporation.
 - 8.1.2 Limit the educational program to the principles of that church or denomination, and the diploma or degree is limited to evidence of completion of that education.
 - 8.1.3 Only grant degrees or diplomas in areas of study that contain on their face, in the written description of the title of the degree or diploma being conferred, a reference to the theological or religious aspect of the degree's subject area.
 - 8.1.4 Not market, offer, or grant degrees or diplomas which are represented as being linked to a church or denomination, but which, in reality, are degrees in secular areas of study.
 - 8.1.5 Have obtained exemption from property taxation under state law and shall

have submitted a copy of the certificate of this exemption to the Commission.

8.2 Additional evidence may be provided by an institution seeking to substantiate that the institution is a religious institution including:

8.2.1 Evidence that the institution holds at least pre-accreditation status with one of the following nationally recognized accrediting associations:

- (a) The Accrediting Association of Bible Colleges; or
- (b) The Association of Advanced Rabbinical and Talmudic Schools; or
- (c) The Association of Theological Schools in the United States and Canada; or
- (d) Other appropriate accrediting association recognized by the U.S. Department of Education and determined as appropriate by the Commission.

8.2.2 A statement of institutional mission clearly establishing the mission of the institution as solely religious, and curricula and degree, diploma, or certification programs that clearly support that mission singularly.

8.2.3 Other appropriate, substantial, evidence of qualification for state authorization as a seminary or Bible college.

8.3 An institution shall not be eligible for authorization as a seminary or Bible college if it offers degrees appropriate only for academic institutions, such as, but not limited to, Bachelor of Arts or Bachelor of Science, Master of Arts or Master of Science, Doctor of Philosophy, or other degrees typically offered by academic institutions, regardless of curriculum of course content, unless the degree title includes the religious field of study (e.g., "Bachelor of Arts in Religious Studies"). Institutions authorized as seminaries and Bible colleges also shall not offer degrees associated with specific professional fields or endeavors not clearly and directly related to religious studies or occupations. Examples of such degree titles are Bachelor of Business Administration or Master of Business Administration; Bachelor of Education, Master of Education or Doctor of Education; and Doctor of Psychology.

8.4 An authorized seminary or Bible college, its educational programs, its degrees and diplomas, and its honorary degrees, have no state approval or recognition status whatsoever. An institution operating under this authorization shall not state or imply by any means whatsoever that there exists any recognition by the state or by any agency or agent of the state of the education, documents awarded by the institution, or the institution itself, other than the institution's authorization to operate.

§133-20-9. CRITERIA FOR AUTHORIZATION – PRIVATE COLLEGE OR UNIVERSITY

9.1 A private college or university, under the provisions of this rule, is an institution which is "doing business or maintaining a place of business in the state of West Virginia" which offers courses of instruction or study wherein credits may be earned toward a degree in a field of endeavor. A publicly-supported college or

university in another state will be treated as a "private college or university" and will be authorized to offer courses of instruction toward a degree, degree credits, or degrees if it qualifies under the criteria for such institutions. An institution that employs an agent or representative in West Virginia and delivers instruction by any means within the state shall be regarded as a private college or university and shall be authorized on the same basis as any other such institution.

9.2 An institution seeking authorization to operate in West Virginia must meet the following essential conditions and accreditation standards established by the Commission. To apply for preliminary state authorization the institution must provide to the Commission full documentation that demonstrates fulfillment of the essential conditions and the accreditation standards.

9.3 **Essential Conditions**

9.3.1 Familiarity with accreditation and state authorization policies and procedures

The institution shall provide evidence that it is familiar with and understands accreditation procedures of the Higher Learning Commission of the North Central Association or other appropriate body and state authorization policies and procedures. The statement should indicate perceived strengths and weaknesses with respect to accreditation criteria and assess the capabilities of the institution in achieving accreditation status. It shall state the name of the accrediting association from which accreditation will be sought.

9.3.2 Statement of mission

A statement of mission shall have been developed, formally adopted by the institution's governing body and made public, which defines the basic character of the institution, including a brief description of the educational programs to be offered and their purposes, the students for which the programs are intended, the geographical area served by the institution (or the particular constituency it serves), and a description of how the institution will fit within the broader higher education community. The mission shall be appropriate to an institution of higher education and the institution must plan to award degrees. The mission statement shall be provided to the Commission.

9.3.3 Institutional organization

(a) A governing board that possesses and exercises necessary legal power to establish and review basic policies that govern the institution shall have been formally established. The board shall include among its members some who represent the public interest and are sufficiently autonomous from the administration and ownership to assure the integrity of the institution. The Commission shall be provided a list of the members of the board with a

- brief resume of each.
- (b) An executive officer shall be designated by the governing board to provide administrative leadership for the institution. This officer's name and title, and the address of the administrative office, shall be provided to the Commission.
 - (c) If faculty members are employed at the time the application is filed with the Commission, the faculty members themselves, their academic credentials (degrees, previous experience, etc.), and teaching fields shall be identified. If no faculty members have been employed, the institution shall describe the qualifications of the faculty that is to be recruited and the procedures that will be used to find and contract with faculty members.

9.3.4 Degrees and academic programs

- (a) A degree shall be awarded upon successful completion of an educational program. The institution shall provide a list of the degrees it proposes to award.
- (b) The planned educational programs shall be compatible with the proposed institutional mission. The relationship shall be described in documents provided to the Commission.
- (c) The academic program proposed for offering shall be appropriately named and be based on fields of study recognized as appropriate for a postsecondary institution. Evidence shall be provided to the Commission that the fields of study upon which the academic programs are to be based are, in fact, so recognized. Such recognition, for example, could be demonstrated by the existence of professional literature in the field; the offering of similar programs in already-accredited institutions, generally; and by the existence of professional organizations related to the field.
- (d) The content and length of the proposed academic program shall follow practices common to institutions of higher education.

Documentation shall be provided to the Commission that lists requirements for each degree program including representative course syllabi specifying goals and requirements, course content, methods of evaluation, and bibliography.

The student-teacher ratio shall be reasonable at all times in keeping with generally accepted teaching modes for the subject matter. The institution must employ at least one full-time faculty for each major.

- (e) Any proposed undergraduate degree program shall include a coherent general education component that is consistent

with the institution's mission and appropriate to its educational programs. The undergraduate general education component shall be documented.

General education is defined as follows:

General Education is "general" in several clearly identifiable ways: it is not directly related to a student's formal technical, vocational or professional preparation; it is a part of every student's course of study, regardless of his or her area of emphasis; and it is intended to impart common knowledge, intellectual concepts, and attitudes that every educated person should possess.

- (f) Student access to all necessary learning resources and support services shall be provided. Necessary resources and support services vary by type of program, but all require some use of library resources. Laboratories may be required for some programs. Support services such as academic advising, financial aid counseling, and support for special, targeted, constituencies may be needed. The institution shall describe the learning resources and support services that it will provide and state how they will be provided to students on a regular, dependable basis.
- (g) Distance learning instruction, when offered, should be considered part of the total program and be judged by criteria as used for sessions and courses offered by the institution in the regular academic year. Documentation shall be provided to the Commission that shows that academic standards for all programs or courses offered electronically are the same as those for other courses delivered at the institution.

9.3.5 Admission policies

Admission policies shall be consistent with the institution's mission and appropriate to the educational program. The Commission shall be provided with a copy of the institution's admission policies. The policies shall define the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs.

9.3.6 Financial resources

The institution shall have financial resources adequate to support start-up activities and sources of funds sufficient to ensure that the institution can sustain itself once students have been admitted. The Commission shall be provided with:

- (a) A current financial statement compiled or audited by an independent certified public accountant. If the financial statement is unaudited or internally generated, a copy of the most recent income tax return must also be submitted;

- (b) A budget listing all sources of income and all Educational and General (E&G) expenditures and specifying the dollar amounts and percentages for each component of the budget for the preceding three fiscal years (including the current year). A projection of expenditures and revenues for the upcoming year should be included.

9.3.7 Faculty credentials

- (a) The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds appropriate academic credentials in the program area or discipline in which the faculty member teaches. Each instructional faculty member shall either: (1) possess one or more degrees in an appropriate discipline; or (2) as an alternative to formal academic credentials, demonstrate competence by virtue of prior experience or academic training, or both, which are related to the field in which the instruction will be offered.
- (b) The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds academic credentials appropriate to the degree level of the programs or programs in which the faculty member teaches.
 - 1. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science degree shall:
 - If teaching general education courses, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline taught.
 - If teaching occupational/technical courses, hold either an associate degree or qualify for a faculty appointment by virtue of scholarly or professional achievements.
 - 2. All instructional faculty teaching in a college transfer program at the associate level shall:
 - If teaching general education courses or in program in the liberal arts and sciences, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.
 - If teaching occupational/technical courses, either hold a baccalaureate degree or qualify for a faculty appointment by virtue of scholarly or professional achievements.
 - 3. An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty,

including at least one instructional faculty member teaching in each program, shall hold a doctoral or other terminal degree. All other instructional faculty members who teach in programs at the baccalaureate level shall either:

- Hold a master's degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

4. All instructional faculty teaching in a program at the master's, first professional or doctoral level shall either:

- Hold a doctoral or other terminal degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

- (c) An institution must employ faculty members whose highest earned degree presented as the credential qualifying the faculty member to teach at the institution is from an institution accredited by an accrediting body recognized by the U.S. Department of Education. Exceptions may be made only with the prior consent of the Commission.

9.3.8 Evaluation and assessment

The institution must have a clearly defined process by which the curriculum is established, reviewed, and evaluated. The institution must provide for appropriate and regular evaluation of the institution and its program and course effectiveness including assessment of student learning, retention, graduation rates and student, graduate, faculty and employer satisfaction. The results must be used to ensure and improve quality of instruction.

9.3.9 Tuition policies

- (a) A tuition policy shall be developed that provides:
1. The total tuition for any specific program shall be the same for all persons enrolled at the same time;
 2. Tuition charges for programs shall be justifiable, effective on specific dates and applicable to all who enroll thereafter;
 3. All extra charges and costs shall be revealed to the prospective student before he or she is enrolled;
- (b) Institutions that the U.S. Department of Education has approved for eligibility for federal student financial aid must comply with the federal regulations governing institutional refunds. An institution must develop criteria for refunds of tuition and fees and make them available to all students.

9.3.10 Financial Aid

A policy shall have been developed that provides prospective students and applicants with basic opportunities for student financial aid. This information shall include but not be limited to: (1) types of federal, state, local, private and institutional aid offered to students at the institution; (2) description of the financial aid application process and the method for determining student eligibility for aid; (3) methods and schedules used to determine and disburse financial aid to students; and (4) statement of the rights and responsibilities of financial aid recipients.

9.3.11 Library resources

The institution shall maintain or ensure via current and formal written agreements with other libraries or from other resources that students have adequate access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Institutions offering graduate work shall provide library resources that include basic reference and bibliographic works in each field where work is offered and the major journal and serial sets for maintaining currency in each discipline. Utilization of electronic data collections should also be addressed.

9.3.12 Student records

- (a) The institution shall maintain records on all enrolled students. These records minimally shall include:
 - 1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the institution's admission standards. Each student record must reflect the requirements and justification for admission of the student to the institution. Admission records must be maintained for five years.
 - 2. Transcript of the student's academic work at the institution shall be retained permanently in either hard copy forms or in a database with backup.
 - 3. A record of student academic progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades and indication of the student's status (graduated probation, etc.).
- (b) The institution must have policies concerning retention and disposal of records and information-release policies which respect the rights of individual privacy, the confidentiality of records and the best interests of the student and

institution.

- (c) The institution shall have a written plan for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of institutional closure.

9.3.13 Student grievances

An institution shall publish and make available to all students the institution's grievance policies and procedures regarding the receipt, investigation and resolution of student complaints. These policies must include:

- (a) An appropriate time frame for investigating and resolving the complaint;
- (b) Safeguards that those persons charged with resolving the complaint are capable of making a fair and impartial judgment;
- (c) Procedures to ensure that a student will not be subject to unfair actions as a result of an initiation of a complaint proceeding; and
- (d) The maintenance of records, disposition and other pertinent information concerning institutional complaints for at least five years.

9.3.14 Other criteria deemed to be pertinent

9.4 **Accreditation Standards**

9. 4.1 Accredited on the basis of an on-site review in West Virginia by one of the six regional accrediting associations; or

9. 4.2 Accredited by an acceptable alternative accrediting agency determined by the Commission to be appropriate to its educational purposes and programs; or

9. 4.3 Provide evidence that the institution is making reasonable and timely progress toward such accreditation, as determined by or in accordance with standards determined by the Commission.

9.5 The Commission, at its discretion, may waive all or part of the reporting requirements in section 9.3 of this rule for regionally accredited institutions seeking authorization to offer credit courses or academic degree programs.

§133-20-10. PROCEDURES FOR REVIEW OF ESSENTIAL CONDITIONS AND ACCREDITATION STATUS, PRIVATE COLLEGE OR UNIVERSITY

10.1 As the first step toward state authorization, the executive leaders of an institution seeking state authorization to operate in West Virginia as a private college or university shall consult with the Director of Academic Affairs or designee and shall submit any appropriate documents or materials related to authorization, including those which address the essential conditions and accreditation

standards in sections 9.3 and 9.4, as may be requested. The Commission staff may organize a site visit of any institutional facilities if deemed necessary.

10.2 The Commission staff shall review the documentation submitted by the institution and determine whether the institution meets the essential conditions in section 9.3.

10.3 The Commission staff shall determine whether the institution is accredited either by:

- (a) one of the six nationally recognized accrediting associations, or
- (b) an accrediting association recognized by the United States Department of Education and determined as appropriate to the institution's educational purposes and programs by the Commission.

10.4 If the institution does not hold accreditation, the Commission staff shall request submission of information verifying its accreditation status and/or evidence of "reasonable and timely progress" toward accreditation. Reasonable and timely progress toward accreditation is understood to be a status with the regional accrediting association or an acceptable alternative accrediting association recognized by the U.S. Department of Education (recognition shall be documented) that indicates that the institution has been determined to hold the potential for accreditation and is actively pursuing accreditation within the timetable established by the regional accrediting association (unless an alternative timetable has been presented to and accepted by the Commission).

10.5 Consultation, Review of Documents, and Assignment of Institutional Status

10.5.1 After the consultation and review of all documents submitted, the Commission shall assign the institution to one of the following categories:

10.5.1.1 Category I, Accredited Out-of-State Institutions

Institutions in this category are formed, chartered or established outside West Virginia and have been fully accredited by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education as approved by the Commission. An institution in Category I has its location outside West Virginia. Such institution is seeking to offer courses and/or an academic degree programs in West Virginia.

10.5.1.2 Category II, Accredited In-State with On-Site West Virginia Review

Institutions in this category are accredited on the basis of on-site review in West Virginia by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education as approved by the Commission. An institution in Category II is one which is seeking authorization to relocate or to establish a branch

campus in West Virginia.

10.5.1.3 Category III, Accredited In-State Without On-Site West Virginia Review

Institutions accredited by a regional accrediting association or another accrediting body recognized by the U.S. Department of Education, as approved by the Commission, but not on the basis of an on-site review in West Virginia shall have a period of one year from the date its activities begin in West Virginia to obtain such a review. The time limit may be extended upon presentation of documentation of good cause. Once the institution has received accreditation on the basis of on-site review in West Virginia, it shall be assigned Category II status.

10.5.1.4 Category IV, Maintaining Reasonable and Timely Progress Toward Accreditation

Institutions in this category are making reasonable and timely progress toward accreditation in accordance with the statute and continue to make such progress in accordance with the policies and timetable outlined in section 10.7, below. An institution in Category IV is one which is seeking authorization to locate a campus in West Virginia.

10.6 Authorization – Out-of-State Institutions – Category I

10.6.1 Any higher education institutions having its principal place of operation outside West Virginia which desires to offer degrees or courses within West Virginia must be authorized by the Commission.

10.6.2 The institution must submit an application for approval to the Commission for each course or degree program to be offered at a site. The application should include written unconditional assurance that:

10.6.2.1 Each course, program of study, or degree, diploma, or certificate program proposed to be offered in West Virginia has been approved by the governing board of the institution, and if applicable, by the appropriate state agency in the state where the main campus of the institution is located.

10.6.2.2 The institution has been approved as necessary by the appropriate agency, if any, in the state where the main campus of the institution is located to:

- (a) Offer degree, diploma, or certificate programs at the level for which credit is proposed to be awarded in those programs in West Virginia; and
- (b) Offer degree programs outside the state where the main campus is located.

10.6.2.3 Any credit earned in West Virginia can be transferred to the institution's principal location outside West Virginia as part of an existing degree, diploma, or certificate program offered by the institution.

10.6.2.4 The institution offers the same program at the same level at its principal location outside West Virginia that it seeks to offer in West Virginia.

10.6.3 In making its determination, the Commission will consider whether the proposed degree programs or courses duplicate existing offerings of other institutions of higher education at the locations for which approval is requested.

10.6.4 Authorization for degree programs may be for a period of up to four years.

Authorization for courses may be granted for a period of one year at a specified location with an application for renewal of the authorization required to be filed annually with the Commission at least ninety days prior to the expiration of the authorization.

10.6.5 The Commission may waive any or all of the reporting requirements for Category I institutions that are delineated in section 9.3 of this rule.

10.7 Authorization Policies and Timetables for Newly-Established Institutions and Currently-Operating Institutions Seeking Accreditation; Fees

10.7.1 Procedures for Institutions Applying for Initial State Authorization: Preliminary State Authorization

10.7.1.1 Prior to the acceptance of students, the offering of instruction, the award of credits toward a degree, or the award of a degree, an organization that seeks to be authorized as a "private college or university" shall provide to the Commission evidence that clearly and fully documents that it is an institution that meets the Essential Conditions and that can meet the accreditation criterion for state authorization. An institution seeking Preliminary State Authorization shall demonstrate that it is such an institution by providing information as described in section 9.3.

10.7.1.2 An initial application fee of \$2,000 shall accompany the submission of documentation required in section 9.3.

10.7.1.3 The Commission staff shall review documentation required in section 9.3 and shall determine whether or not the institution is in substantial compliance with the essential conditions. If the documentation indicates substantial compliance, the Commission staff will prepare a report with recommendation for Commission action.

10.7.1.3.1 Before preparing a report, the Commission staff may organize a committee to visit the site(s) of the institution seeking state authorization. The principal task of the site visit committee will be to verify that the institution complies with the Commission's standards for preliminary authorization and to report its findings to the Commission.

The site visit committee shall be composed of:

- a) Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for approval.
- b) Members of the Commission staff. The Director of Academic Affairs or designee shall serve as chair of the committee.

The site visit will be scheduled at a time which is mutually convenient to the institution and the Commission. The institution shall pay the reasonable expenses associated with the site visit.

10.7.1.3.2 Following the site visit, the Commission staff will prepare a report that contains:

- a) a signed report by the site visit committee; and
- b) a recommendation by the Commission staff for action by the Commission regarding granting preliminary authorization as provided for in section 10.7.1.4.

10.7.1.3.3 A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institutional comments will be included with the staff report presented to the Commission.

10.7.1.4 An institution that provides satisfactory information will be granted Preliminary State Authorization by the Commission for a period of time up to six (6) months. Within that period of time the institution shall satisfactorily complete preliminary information as required by the regional or other appropriate, acceptable, accrediting association, and shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted Category IV authorization status.

10.7.1.5 Upon presentation of documentation that the preliminary information submitted to the accrediting association is complete

and satisfactory, the Commission will grant the institution Category IV state authorization, "Making Reasonable and Timely Progress Toward Accreditation." The institution shall continue the accreditation process immediately.

Upon receipt of Category IV authorization the institution shall:

- (a) Immediately establish an evaluation schedule with the Higher Learning Commission of the North Central Association of Colleges and Schools or other appropriate accrediting association
- (b) Initiate the institutional self-study;
- (c) Host an on-site accreditation visit within 24 months of receipt of Category IV authorization status unless that time limit has been expressly modified by the Commission because of extenuating circumstances.

Failure to pursue accreditation continuously shall result in loss of state authorization.

10.7.1.6 An institution with Category IV state authorization shall submit an annual report in a format determined by Commission staff. The annual report should include the following:

- (a) any changes or additions to information previously submitted as part of the basis for category IV authorization;
- (b) copy of current catalog with major changes cited;
- (c) the latest financial statement from the most recent institutional fiscal year;
- (d) an enrollment report from the most recent academic year;
- (e) a list of all institutional personnel including staff, instructors and agents;
- (f) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendation.

10.7.1.7 A fee of \$500 shall accompany the submission of the annual report.

10.7.1.8 Following the on-site accreditation visit, the institution shall be continued in Category IV status pending action by the Higher Learning Commission of the North Central Association of Colleges and Schools or other appropriate accrediting association. When that action has been taken, the institution shall immediately notify the Commission which will then assign the institution an authorization status from among the following:

- (a) Category II, Accredited, as a result of the decision by the accrediting association to accredit the institution. This status shall change only if the accrediting association changes the institution's accreditation status. An

accredited private college or university shall notify the Commission following each formal action of the accrediting association with respect to its accreditation.

- (b) Continuation of Category IV, Maintaining Reasonable and Timely Progress Toward Accreditation, based upon the accrediting association decision to grant the status of Candidate for Accreditation to the institution. An institution that holds candidacy for accreditation shall submit semi-annual reports to the Commission documenting its progress toward the achievement of accreditation consistent with policy of appropriate accreditation associations. Continuation of Category IV status shall not extend beyond 6 years.
- (c) Not authorized as a result of denial of accreditation by the accrediting association.
- (d) Continuation of Category IV status pending on appeal of denial of accreditation by the Higher Learning Commission of the North Central Association. Continuation on these grounds shall only be granted upon showing good cause to the Commission. An institution's final authorization status will be based upon the action taken by the accrediting association.

10.7.1.9 An institution that does not attain either accreditation or candidacy for accreditation status after its initial on-site accreditation review, but can fully demonstrate continuing progress toward accreditation and the likelihood of achieving a satisfactory status upon a second on-site review, may be continued in Category IV. The institution shall have no longer than 24 months to schedule a second on-site review in order to attempt to achieve accreditation or candidacy for accreditation status. Failure to achieve either result in the second attempt shall result in loss of state authorization.

10.7.1.10 An institution that is denied preliminary state authorization by the Commission may appeal the decision in accordance with the provisions of section 12 of this rule.

§133-20-11. AUTHORIZATION AND TERMINATION OF STATE AUTHORIZATION

11.1 Notification of Authorization Status

11.1.1 Any institution that is granted authorization may receive written notification of acceptable status upon request. Private colleges or universities authorized in Category III shall receive written notification of the time limits for a satisfactory on-site West Virginia accreditation review.

11.2 Termination of Authorization; Notification; Appeal

11.2.1 An institution shall provide the Commission with a copy of any notice of warning, suspension, revocation or other

adverse action received from any national or regional accrediting agency within five (5) days of receipt of such notice

11.2.2 The Commission may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, or forfeit the institution's surety bonds, or take any other appropriate action. Good cause shall consist of:

11.2.2.1 The institution is no longer making reasonable and timely progress toward accreditation while assigned a category IV designation as defined in section 10.5.1.4.

11.2.2.2 Loss of accreditation by a nationally or regionally recognized accrediting agency;

11.2.2.3 Cancellation of the institution's bond by the bonding company and failure to secure a replacement in accordance with this rule;

11.2.2.4 A final determination that the institution has engaged in conduct prohibited by this rule, and any specified corrective action has not been taken within the required time;

11.2.2.5 Closure of the institution without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the institution's contractual obligations to the students;

11.2.2.6 Conviction of the owner of an institution for a felony or crime involving administration of the institution or involving Federal Student Assistance programs.

11.2.3 An institution authorized as a seminary or Bible college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed. In the absence of a timely appeal the termination shall be final.

11.2.4 Notification to Cease Offering Degrees or Degree Credits

Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.

§133-20-12. NOTIFICATION: APPEALS

- 12.1 Upon receipt by the Commission of information constituting any of the grounds identified in section 11.2.2 or denial of preliminary authorization, the Commission shall notify the institution and its owner in writing of its intent to recommend denial, suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.
 - 12.1.1 The owner of the institution may, within ten (10) work days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) work days of such request at the Chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the Chancellor.
 - 12.1.2 The hearing shall be conducted by the Chancellor of the Commission or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.
 - 12.1.3 The Chancellor or his/her designee may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.
 - 12.1.4 If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor or his/her designee shall be deemed unchallenged by the institution and reported to the Commission for final action.
- 12.2 At the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by clear and convincing evidence.
- 12.3 Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules of evidence not admissible there under may be admitted, except where precluded by statute. If it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- 12.4 The rules of privilege recognized by the law of this state shall be followed.
- 12.5 Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

- 12.6 Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor or his/her designee; and, may cross-examine witnesses called by the Commission in support of the charges.
- 12.7 The hearing shall be open to the general public.
- 12.8 A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.
- 12.9 Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- 12.10 The Commission may call witnesses to testify in support of charges and may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of its position.
- 12.11 All parties shall have the right to offer opening and closing arguments.
- 12.12 Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.
- 12.13 All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10) days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.
- 12.14 All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.
- 12.15 All reported materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties.
- 12.16 Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor or his/her designee.
- 12.17 At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:
 - a) To dispose of procedural requests, pre-hearing motions or similar matters;
 - b) To simplify or settle issues by consent of the parties; or,
 - c) To provide for the informal disposition of cases by stipulation or

agreement.

- 12.18 The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.
- 12.19 Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.
- 12.20 Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code section 29A-5-1(b).
- 12.21 Written requests by a party for the issuance of subpoenas duces tecum as provided in Section 12.20 of this rule must be received by the Commission no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code section 29A-5-1(b).
- 12.22 Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code section 29A-5-3. Such orders shall be entered within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.
- 12.23 Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor or his/her designee and must be approved by a majority of the Commission by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or his or her attorney of record, if any, within ten (10) days after entry by the Commission by personal service or by registered or certified mail.
- 12.24 The final order may deny preliminary authorization; may suspend, withdraw or revoke the authorization of the institution, place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Commission, up to and including payment of loans, interest and other charges in connection with institution loans, other out-of-pocket damages, and any nominal damages caused a student by the institution's violation of this rule.
- 12.25 All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code section 29A-5-1, et seq.
- 12.26 Any relief a student believes he or she was not rightfully awarded by the Commission pursuant to this rule may be pursued in any other

appropriate forum.

§133-20-13. NOTIFICATION AND DEPOSIT OF RECORDS UPON DISCONTINUANCE OF A PROGRAM OR INSTITUTION

- 13.1 If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief executive officer shall notify the Commission of the date of discontinuance and the name and address of the agency where records will be maintained.
- 13.2 Records shall be permanently maintained and copies may be obtained by authorized parties. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.

§133-20-14. ADVERTISEMENTS, ANNOUNCEMENTS AND OTHER PROMOTIONAL MATERIALS

- 14.1 An institution seeking authorization shall adhere to the following principles:
 - 14.1.1 "Advertising" includes any form of public notice however distributed. Within this definition would be virtually all publications and promotional items and efforts that could normally be expected to be seen by significant numbers of prospective students or their sponsors. Examples include catalogs, bulletins, brochures and other institution publications, signs, mailing pieces, radio, television, newspaper, or any other form of public notice designed to aid in the institution's recruiting and promotional activities.
 - 14.1.2 An institution shall use its name as shown in its letter of approval from the Commission, together with a complete address, for all advertising and promotional purposes within the state.
 - 14.1.3 All advertisements, announcements and promotional material of any kind which are distributed in West Virginia shall be free from statements that are untrue, deceptive or misleading with respect to the institution, its personnel, its services or the content, accreditation status and transferability of its courses or degree, diploma or certificate programs.
 - 14.1.4 Reference in advertising to accreditation shall name the agency and shall be limited to accreditation currently held by the institution through nationally recognized accrediting agencies as defined and listed by the United States Department of Education.

14.1.5 No advertisement, announcement or any other material produced by or on behalf of an institution of higher education shall in any way indicate that the institution is supervised, recommended, endorsed or accredited by the Commission; neither shall it include the name of the Commission except to assert that the Commission has authorized the institution to operate in the state.