

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

Form #5

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WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: W. Va. Code §18B-4-7

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 20

TITLE OF RULE BEING PROPOSED: Authorization of Degree Granting Institutions

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 10, 2002


Authorized Signature

SCANNED

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

**SERIES 20
AUTHORIZATION OF DEGREE GRANTING INSTITUTIONS**

FILED
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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

SECTION 1. GENERAL

- 1.1. Scope: This rule establishes the policy regarding accreditation and approval of degree-granting institutions.
- 1.2. Authority: W. Va. Code §18B-4-7
- 1.3. Filing Date: July 11, 2002
- 1.4. Effective Date: August 10, 2002
- 1.5. Repeal of Former Rule: Repeals and replaces Title 128, Series 15, and Title 131, Series 15 which had an effective date of September 18, 1988.

SECTION 2. PURPOSE

- 2.1 The 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 in the State, the entity shall apply to the Commission for authorization to operate in the State. The provisions of this policy 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.

SECTION 3. DEFINITIONS

- 3.1 "Commission" means the West Virginia Higher Education Policy Commission.
- 3.2 "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.

- 3.3 "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.
- 3.4 "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.
- 3.5 "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.
- 3.6 "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.
- 3.7 "Physical Presence" means an institution employs in West Virginia any person or persons for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, or any other activity on behalf of the sponsoring organization. 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.

SECTION 4. EXEMPTIONS

- 4.1 The provisions of the policy 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, 2002.
 - 4.1.2 Correspondence, business, occupational and trade schools which
 - (a) offer nothing higher than a specialized associate degree, and
 - (b) typically do not pursue regional accreditation.
 - 4.1.3 Out-of-state institutions:
 - (a) offering courses or programs through brokering or other collaborative arrangements with a West Virginia public institution of higher education;
 - (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 policy, it shall notify the institution in writing with the reasons for the determination.

SECTION 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 policy.
- 5.2 This section shall not apply to any entity which used the term "college" or "university" prior to July 1, 2002.
- 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.

SECTION 6. AUTHORIZATION TO OPERATE

- 6.1 All private colleges and universities, private proprietary schools and seminaries or bible colleges shall register with the West Virginia Higher Education Policy 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.
- 6.2 Private colleges or universities and seminaries or bible colleges shall be authorized under the provision of this policy. Private proprietary schools exempted under the provisions of § 4 of this policy shall be governed by the provisions of the Policy on Correspondence, Business, Occupational and Trade Schools.
- 6.3 Authorization is limited to those institutions that deliver instruction in West Virginia and have a physical presence in West Virginia.

SECTION 7. GRANTING OF AUTHORIZATION

- 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 prior to submission of required documentation.

- 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. to operate
- 7.4 Before a newly established institution of higher education is authorized under the provisions of §10.4 of this policy, 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 amount of the bond shall be \$50,000.

SECTION 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 policy 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 school 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.
- 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.

SECTION 9. CRITERIA FOR AUTHORIZATION – PRIVATE COLLEGE OR UNIVERSITY

- 9.1 A private college or university, under the provisions of this policy, 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 Criteria to qualify as a private college or university are:
- 9.2.1 Accredited on the basis of an on-site review in West Virginia by one of the six regional accrediting associations; or
 - 9.2.2 Accredited by an acceptable alternative accrediting agency determined by the Commission to be appropriate to its educational purposes and programs; or
 - 9.2.3 Making reasonable and timely progress toward such accreditation, as determined by or in accordance with standards determined by the Commission.
- 9.3 The Commission hereby determines that any accrediting association recognized by the United States Department of Education will be accepted by the Commission unless the Commission determines that such an association is not appropriate to the educational purposes and programs of the institution.

SECTION 10. PROCEDURES FOR REVIEW OF ACCREDITATION STATUS, PRIVATE COLLEGE OR UNIVERSITY

- 10.1 Determination of Acceptable Accreditation
- 10.1.1 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 appropriate to the institution's educational purposes and programs.
 - 10.1.2 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). Institutions that are seeking initial accreditation shall follow the policies and procedures articulated in § 10.4, below.
- 10.2 Consultation, Review of Documents, and Assignment of Institutional Status
- 10.2.1 As the first step toward state authorization, institutions seeking state

authorization to operate in West Virginia as a private college or university shall consult with the designated administrator of the Commission prior to the submission of required documentation.

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

10.2.2.1 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.

10.2.2.2 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.

10.2.2.3 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 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.

10.2.2.4 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 §10.4, below.

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

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

10.3.2 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:

10.3.2.1 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.

10.3.2.2 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.

10.3.2.3 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.

10.3.2.4 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.

10.3.3 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.

10.3.4 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.

10.4 Authorization Policies and Timetables for Newly-Established Institutions and Currently-Operating Institutions Seeking Accreditation

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

10.4.1.1 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 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 § 10.4.1.3, below.

10.4.1.2 If the accrediting association from which the applying institution will seek accreditation is determined by the Commission to be an appropriate and acceptable alternative to the regional accrediting association but the alternative association does not require an accreditation procedure that is comparable to that required by the regional accrediting association, the institution shall notify the Commission, and guidelines and timetables for the pursuit of accreditation shall be established consistent with both Commission intent and the alternative accrediting association's policies and procedures. The information requested by the Commission for Preliminary State Authorization is required for all institutions. The Commission may also request additional information that can be used to determine the institution's potential for the achievement of accreditation.

10.4.1.3 To apply for Preliminary State Authorization, an organization must provide to the Commission full documentation that demonstrates fulfillment of each of the criteria below. The commission shall adopt standards for each of the criteria.

- (a) Familiarity with accreditation and state authorization policies and procedures
- (b) Statement of mission
- (c) Institutional organization
- (d) Degrees and academic programs
- (e) Admission policies
- (f) Financial resources

10.4.1.4 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. The Commission shall notify the institution in writing. 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 III authorization status.

10.4.1.5 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 NCA 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.

10.4.1.6 Following the on-site accreditation visit, the institution shall be continued in Category IV status pending action by the NCA Commission on Institutions of Higher Education 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 NCA Executive Board. 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.

10.4.1.7 An institution that does not attain either accreditation or candidate 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 candidate for accreditation status. Failure to achieve either result in the second attempt shall result in loss of state authorization.

SECTION 11. NOTIFICATION OF INSTITUTION: 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 Private colleges or universities shall be notified of the termination of authorization by the Commission if at any point the staff of the Commission determines that an institution is no longer making reasonable and timely progress toward accreditation. 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.

Authorized private colleges or universities whose accreditation upon which their state authorization was based is terminated by the accrediting agency for any reason shall no longer be authorized, effective the date of termination of accreditation. A phase-out period of not more than one additional academic term shall be permitted.

11.2.2 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.

11.2.3 Appeals to the Commission by Private Colleges or Universities, or by Seminaries or Bible Colleges Appeals to the Commission by institutions notified of the termination of their authorization shall be in writing and must be received

within 30 days of the date of the mailing of the notice by the Commission to the institution of termination of the institution's state authorization. Upon appeal, a hearing shall be held by the Commission at a regular monthly meeting of the Commission. The Commission's decision 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.

SECTION 12. NOTIFICATION AND DEPOSIT OF RECORDS UPON DISCONTINUANCE OF A PROGRAM OR INSTITUTION

- 12.1 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.
- 12.2 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.

SUMMARY OF COMMENTS RECEIVED

**TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
SERIES 20
AUTHORIZATION OF DEGREE GRANTING INSTITUTIONS**

Series 20, *Authorization of Degree Granting Institutions*, was approved by the HEPC at its April 19, 2002 meeting for filing for a 30-day public comment period. One comment was received which has resulted in two recommended changes. The first change relates to the definition of "physical presence." The following language was deleted from the first sentence of the definition in § 6.4, "regardless of whether or not the person or persons employed receive any form of compensation." One state college was concerned that this language could be construed in a manner that might hinder an articulation between the college and out-of-state institutions. The other facet of this change was to move the definition of physical presence to a new section, 3.7.

The second change was to add a new provision to the list of exemptions in § 4.1.3. The new section would exempt from the provisions of this policy out-of-state institutions which offer courses or programs through brokering or other collaborative arrangements with West Virginia public higher education institutions