

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

Form #2

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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: Legislative CITE AUTHORITY: WV Code § 18B-3-5, 18B-4(A)(38)

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 35

TITLE OF RULE BEING PROPOSED: Correspondence, Business, Occupational, and Trade Schools

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 September 6, 2002 AT 10:00 AM 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 Blvd. 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

SCANNED

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

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SERIES 35
CORRESPONDENCE, BUSINESS, OCCUPATIONAL, and TRADE SCHOOLS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SECTION 1. GENERAL

- 1.1 Scope - Rule regarding the issuance, renewal, and revocation of permits to correspondence, business, occupational, and trade schools.
- 1.2 Authority - West Virginia Code §18B-3-5. 18b-1B-4(A)(38)
- 1.3 Filing Date - ~~April 3, 1995~~
- 1.4 Effective Date - ~~April 3, 1995~~

SECTION 2. DEFINITIONS

The following words and phrases as used in this rule shall have the following meaning, unless the context otherwise requires.

2.1 Accredited School

A school that is accredited by a regional or national accrediting agency that is recognized by the United States Department of Education.

2.2 Associate Degree

A degree that may be awarded by accredited schools pursuant to a program of not less than two (2) academic years as authorized by West Virginia Code 18B-3-5.

2.3 Policy Commission

The West Virginia Higher Education Policy Commission.

2.4 Campus

A permanent facility where instruction takes place, or a facility where courses are taught for more than ten (10) days per calendar year.

2.5 Chancellor

The Chancellor of the West Virginia Higher Education Policy Commission or his or her designee.

2.6 Correspondence School

An educational organization which, for a consideration, profit, or tuition, teaches or instructs in any subject that prepares an individual for employment solely through the medium of correspondence between the student and the school, and by which the school transmits to or exchanges matter with the student via printed material, video tapes, cassette tapes, telecommunications, or other means.

2.7 Financially Sound

Meeting two of the following: a current ratio of at least 1:1 regarding total current assets compared to total current liabilities, positive total equity, or current year profitability.

2.8 Immediate Family

Spouse, parent, sibling, child, or grandchild.

2.9 Ownership Change

When the change of ownership results in a change in control of the school outside the immediate family.

2.10 Person

Any individual, group of individuals, partnership, association, organization, business, trust, corporation, or other business entity.

2.11 Business, Occupational, or Trade School

An institution, organization, or entity no matter how titled, maintaining or conducting classes or instruction for a consideration, remuneration, or tuition, designed to prepare an individual for employment or enhance employment skills.

2.12 Representative

Any person representing a school, whether such school is located within or outside of the State of West Virginia, or acting as an agent, solicitor, procurer, broker, or independent contractor to produce students or enrollees for any such school by solicitation in any form at any place in this state.

2.13 School

Business, occupational, trade, or correspondence school.

2.14 Specialized Associate Degree

Degree that may be awarded by accredited schools pursuant to a degree program of not less than two (2) academic years.

2.15 State

The State of West Virginia.

2.16 Terms

Regularly established divisions of the academic school year, each with an established starting and ending date, which is normally referred to as modules, quarters, trimesters, or semesters.

SECTION 3. EXEMPTIONS

3.1 For the purpose of this rule, the following are not defined as a correspondence, business, occupational, or trade school:

3.1.1 Any school or person licensed or approved to offer education or training by any other statutory licensing or accrediting agency pursuant to statutes of the West Virginia Code other than 18B-3-5.

- 3.1.2 Any school or organization whose courses of instruction offered are solely for the purpose of teaching preparation of tax returns.
- 3.1.3 Any school conducted by any person, solely on a contractual basis with private or governmental organizations where obtaining a permit is not a condition of the contract and students are not charged tuition or other fees, and no advertisement of courses takes place.
- 3.1.4 Any training or apprenticeship program conducted by a company, union, or other organization in which students, members, or employees enrolled in the training or educational programs are not charged tuition or other fees.
- 3.1.5 Schools that offer courses which are conducted solely for personal development or information, do not prepare or represent themselves as preparing, an individual for a career or enhancing employment opportunities, are not offering sequential courses comprising an entire program and are not offering courses for more than twenty-four (24) weeks per calendar year.
- 3.1.6 Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in public or private schools.
- 3.1.7 Non-profit independent colleges, universities, and other non-profit entities that are accredited by a regional accrediting agency recognized by the United States Department of Education.
- 3.1.8 Public colleges, universities, and schools under the jurisdiction of the West Virginia Higher Education Policy Commission, institutional governing boards set out in W. Va. Code § 18B-2A-1 or the West Virginia Board of Education.

SECTION 4. APPLICATION for PERMIT

- 4.1 Unless exempted as defined in Section 3 of this rule, no person or corporation shall solicit students or operate any correspondence, business, occupational, trade school, or branch campus in the state without first applying for or obtaining a permit issued by the Policy Commission. A permit shall be issued authorizing the solicitation of students and/or authorizing the operation of a school if all conditions of the laws and regulations of this state pertaining to correspondence, business, occupational, and trade schools are met.
- 4.2 If a person as defined in Section 2 of this rule wishes to operate or continue to operate a school or branch campus or to solicit students in the state, that person shall submit an original application for a permit to do so on forms provided by the Policy Commission.
- 4.3 As a condition of the issuance of a permit, a school shall submit with the application:
 - 4.3.1 A copy of the curriculum and description of courses for each program being offered;
 - 4.3.2 A copy of the student enrollment contract;
 - 4.3.3 A copy of the school's tuition refund policy and schedule;
 - 4.3.4 A fully executed surety bond in the appropriate amount;
 - 4.3.5 The appropriate permit fee;
 - 4.3.6 A list of all representatives of the school who will be soliciting students; and
 - 4.3.7 If accredited, documentation from the accrediting agency regarding accreditation status.

- 4.4 Persons shall not be deemed to have submitted an initial application for a permit to operate a school or solicit students in this state unless a properly completed application, the application fee, the required surety bond, and all other information and documentation required by this rule has been submitted to the Policy Commission and the following has been provided:
- 4.4.1 A listing of the individual's or organization's prior school operation history in this state, other states, or other countries.
 - 4.4.2 Information detailing the involvement in, or relationship to, any school that lost its accreditation, lost its authorization to operate because of violation of state or federal laws, was terminated from participation in the federal financial aid programs, closed without arranging a teach-out for students or arranging refunds, or other discharge of the school's contractual obligation to the student.
 - 4.4.3 Proof at the time of filing an initial application that adequate facilities are available and ready for occupancy and that all instructional equipment, books, supplies, and personnel are in place and ready for operation and verified by an on-site visit by a representative of the Policy Commission.
- 4.5 As a condition of permit renewal, all schools shall make annual reports to the Policy Commission on forms furnished by the Policy Commission.
- 4.6 In addition to the requirements set forth above, all out-of-state schools shall annually provide evidence of authority to operate or accreditation by the regulatory agency of each state in which the school is located or conducts business.
- 4.7 A permit shall be valid for one year corresponding to the effective date of the surety bond as required herein.
- 4.8 Any information of a confidential or proprietary nature provided to the Policy Commission by a school for the purpose of obtaining or renewing a permit, and exempted from public disclosure pursuant to the terms of West Virginia Code § 29B-1-4, shall not be disclosed for any purposes inconsistent with this rule or statute.

SECTION 5. PERMIT APPLICATION FEE

- 5.1 Any person applying for a permit to solicit students or operate a school, as defined by this rule, or branch campus in this state shall submit an initial application fee in the amount of two thousand dollars (\$2,000) with the application.
- 5.2 Any person applying for renewal of a permit shall submit an annual fee of five hundred dollars (\$500) with the renewal application for each campus operated by the school.
- 5.3 Any person submitting a permit renewal application and surety bond more than sixty (60) days after the last effective date of the applicant's previous surety bond shall be considered a new applicant for the purpose of paying the initial application fee.

SECTION 6. SURETY BOND REQUIREMENTS

- 6.1 A school located in the state shall submit with its initial or renewal application, the original fully executed continuous surety bond written by a company authorized to do business in this state in the sum of fifty thousand dollars (\$50,000) unless required otherwise by a provision of this section.
- 6.2 Any school which has its physical facilities located in this state and has operated in this state under the present ownership, or ownership control within the immediate family, for at least ten (10) years as of June 10, 1994, is required to submit with its renewal application the original copy

of a fully executed continuous surety bond written by a company authorized to do business in this state in the sum of thirty-five thousand dollars (\$35,000).

- 6.3 Schools having branch campuses within this state shall provide one fully executed surety bond in the appropriate amount providing coverage for all campuses.
- 6.4 In the event of notice of cancellation of the surety bond by a bonding company or revocation of the surety bond by the Policy Commission, the school shall furnish a fully executed replacement to the Policy Commission within sixty (60) days of the school's receipt of the notice of cancellation. But in no event may a school solicit or enroll new students until the appropriate surety bond is in effect.
- 6.5 The termination of a school's surety bond coverage shall be grounds for revocation of its permit if the school fails to replace the bond within the required time.
- 6.6 A school whose physical facilities are located outside this state, and which applies for a permit to solicit students in this state, shall submit a fully executed surety bond in the sum of fifty thousand dollars (\$50,000).
- 6.7 The Policy Commission may increase the bond requirement of any school to one hundred fifty thousand dollars (\$150,000) if the school has its accreditation terminated or its institutional eligibility under the Higher Education Act of 1965, as amended, is terminated for cause.
- 6.8 If, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the school is not financially sound as defined in Section 2 of this rule, the Policy Commission may require the surety bond be increased up to an amount not to exceed four hundred thousand dollars (\$400,000) if the Policy Commission determines an increased bond is reasonably necessary to protect the financial obligations legally due to the students then enrolled at the institution.
- 6.9 Confidentiality Statement - any financial information submitted to the Policy Commission by a school covered under this rule shall be used by the Policy Commission only for purposes of this rule.

SECTION 7. MAINTENANCE of RECORDS

- 7.1 A school shall maintain records at a central location and have them available for inspection by a representative of the Policy Commission.
- 7.2 A school shall maintain academic records suitable for transcript purposes for each student for fifty (50) calendar years after the student has departed the school, or until the student becomes 65 years of age. The records shall include, as a minimum:
 - 7.2.1 The name and address of the school;
 - 7.2.2 The full name and address of the student;
 - 7.2.3 The starting and completion or separation dates;
 - 7.2.4 The course of instruction or subject;
 - 7.2.5 The amount of credit, if any;
 - 7.2.6 The grade for each subject; and
 - 7.2.7 A statement indicating whether the student graduated or completed the course.

- 7.3 A school shall develop and enforce security measures to protect student records from damage or destruction for the required period of time.

SECTION 8. CHANGE of SCHOOL OWNERSHIP

- 8.1 A school must notify the Policy Commission at least thirty (30) days in advance of the change of ownership control. Within thirty (30) days of such notification, the Policy Commission will notify the school of permit status.
- 8.2 When a school is located in this state and has a change of ownership control and the new ownership control is outside of the immediate family of the previous owner, the school may continue to operate under the present permit. However, before the solicitation of students can continue, the school shall submit to the Policy Commission the following:
- 8.2.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000).
 - 8.2.2 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school, and the names and addresses of any other schools in which these persons or entities have or have had a financial interest.
 - 8.2.3 A revised listing of all programs to be offered if changes were made with new ownership.
 - 8.2.4 An application for each representative of the school who will be soliciting students.
- 8.3 If the school is located outside this state, the school must show evidence of compliance with the laws and regulations in the state where the school is located. In addition, before the solicitation of students continues in this state, the school must submit the following:
- 8.3.1 A fully executed surety bond in the amount of fifty thousand dollars (\$50,000);
 - 8.3.2 An application for each representative of the school that will be soliciting students in West Virginia;
 - 8.3.3 A revised listing of all programs to be offered if changes are made with new ownership; and
 - 8.3.4 The names, addresses, and corporate titles of all persons or other entities having a financial interest in the school.

SECTION 9. SCHOOL CLOSING

- 9.1 A school which is closing, either voluntarily or involuntarily, shall:
- 9.1.1 Inform the Policy Commission of this action immediately by certified mail;
 - 9.1.2 Supply the Policy Commission with the name, address, and telephone number of the person responsible for closing arrangements;
 - 9.1.3 Supply the Policy Commission with the name, address, telephone number, and the course of study for each student who has not completed his or her course of study;
 - 9.1.4 Supply the Policy Commission with information on the dates of enrollment, the amount of class time left for each student to complete the course, and the amount of entitled refund, if any, for which each student is eligible;
 - 9.1.5 Inform currently enrolled students by written notice of the appropriate procedures they are to follow to secure refunds due if suitable teachouts have not been arranged, or to

continue their education and supply the Policy Commission with a copy of this notice; and

- 9.1.6 Inform the Policy Commission and currently enrolled students of plans to store the permanent student records and the procedure to obtain copies.

SECTION 10. STUDENT ENROLLMENT CONTRACT

- 10.1 Before the schooling begins, all students shall receive a completed, signed and dated enrollment contract specifying both the school's and student's legal rights and obligations. The agreement may incorporate into the contract by reference information in the school's catalog, student handbook, or other school publication without printing such information or publication in the contract itself. The enrollment contract must contain, but is not limited to, the following:
- 10.1.1 The name and address of the school;
 - 10.1.2 The name of the course of study or program, including the number of credit or clock hours of classroom instruction, home study lessons, or other study units required;
 - 10.1.3 The total cost of the course, term or program for which the student is obligated under the contract including tuition, fees, books, and any other charges the student will incur shall be clearly stated;
 - 10.1.4 The school's cancellation and refund policy including an explanation of the procedures a student will follow to cancel the contract or enrollment agreement; and
 - 10.1.5 The signature of the student applicant, a parent or other sponsor if the student is under the age of eighteen (18), and the appropriate school officials, plus the date signed.
- 10.2 An application for admission is not to be construed as binding on the student, therefore limiting total student financial obligation to the payment of an application fee.
- 10.3 The school shall provide the student with a copy of the completed enrollment agreement that is signed and dated.
- 10.4 Those schools that are accredited by an national or regional accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding student enrollment contracts to satisfy the requirements of this section. However, in the event that enrollment contracts are not addressed by accrediting agency criteria, the provisions of this section must be followed.

SECTION 11. CANCELLATION and REFUND POLICIES

- 11.1 To obtain a permit a school shall have a cancellation and refund policy that incorporates the following provisions:
- 11.1.1 A statement relative to the unused portion of tuition, fees, and other charges if the student does not begin classes, withdraws, or is dismissed.
 - 11.1.2 All fees and payments remitted to a school by a prospective student shall be refunded, minus any stated application fee not to exceed fifty dollars (\$50), if the student is not admitted due to ineligibility.
 - 11.1.3 An admitted student applicant may cancel, by written notice, his or her enrollment any time prior to the first class day of the session for which the application was made, and

the school shall refund all tuition paid by the student minus an application fee not to exceed fifty dollars (\$50).

- 11.1.4 For the purposes of refund calculations, an individual's status as a student shall be considered terminated by the school not later than seven (7) calendar days after the last day on which the student actually attended the school. Termination may be effected earlier by proper notification. A home study program of instruction shall be terminated if a school does not receive a lesson or an appropriate response from the student within six (6) months after receipt of the last lesson, and the date of withdrawal shall be the date of the last lesson received. The date of withdrawal initiated by a student shall be the date a letter is postmarked or proper notification is given. The school shall provide a receipt for the letter or withdrawal notice received.
- 11.1.5 Schools are required to submit refunds to individuals or the appropriate agency within twenty (20) days after receipt of a proper notification of termination from a student.
- 11.1.6 The student refund policy for withdrawals and terminations for schools not accredited by an accrediting agency recognized by the United States Department of Education must at a minimum comply with the following:
 - 11.1.6.1 A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges less the application fee.
 - 11.1.6.2 A student who begins a term and withdraws after completing more than ten percent (10%) through twenty-five percent (25%) of the term is entitled to a refund of seventy-five percent (75%) of the charges less the application fee.
 - 11.1.6.3 A student who withdraws after completing more than twenty-five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges less the application fee.
 - 11.1.6.4 A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund.
- 11.2 Refunds shall be calculated for a specific term as defined in Section 2 of this rule, or the total cost of programs not exceeding one (1) year. In the event that students are financially obligated for a year-long program, the refund policy shall be on a weekly prorata basis through the first sixty percent (60%) of the program. The student's financial commitment shall not be for more than one (1) year at any given time.
- 11.3 Those schools that are accredited by a national or regional accrediting agency recognized by the United States Department of Education, may use the accrediting agency's refund policy to meet the requirements of this section. However, student refunds must be made within twenty (20) days after receipt of a proper notification of termination.
- 11.4 Those schools having their physical facilities located outside this state must comply with the cancellation and refund policies of their home state. If there is no state cancellation and refund policy in their home state, Section 11 of this policy must be followed.

SECTION 12. ADVERTISING

- 12.1 Each school and its representatives shall not make or cause to be made any oral, written, or visual presentation in connection with the offering or publicizing of a subject or course of instruction which is false or misleading.

- 12.2 In its advertising, a school shall:
- 12.2.1 Limit reference to its authority to operate to "Permit to Operate Issued by the West Virginia Higher Education Policy Commission;
 - 12.2.2 Disclose that it is a home study school if it provides such instruction;
 - 12.2.3 Advertise starting or average salaries of its former students only if these claims can be documented for the most recent twelve- (12) month period preceding the advertisement for more than fifty percent (50%) of the graduating class.
- 12.3 In its advertising, a school shall not:
- 12.3.1 Advertise that it is "supervised," "recommended," "endorsed," "approved," or "accredited" by the Policy Commission;
 - 12.3.2 Describe its courses of instruction and subjects in a misleading manner.
 - 12.3.3 Use photographs or other illustrations in ways which misrepresent the size and location of the school, its equipment and facilities for the career for which the student is being trained;
 - 12.3.4 Represent that it is endorsed by or affiliated with a college or university, unless such statements can be documented;
 - 12.3.5 Advertise or indicate in any manner the transferability, or possibility of transferability, of its credits to colleges and universities unless it has written evidence on file of current acceptability of such credits from said colleges or universities;
 - 12.3.6 Advertise that it is endorsed by manufacturers, business establishments, or organizations engaged in the line of work for which the school gives training unless written documentation regarding the endorsement is on file;
 - 12.3.7 Advertise accredited status unless such status has been received from an accrediting body currently listed as recognized by the United States Department of Education and such accrediting body must be named if used in any advertisement or promotional material;
 - 12.3.8 Advertise as an employment agency, or under the same or similar name as such an agency, or advertise training courses in the "Help Wanted" section of any newspaper;
 - 12.3.9 Advertise any tuition, fees, or other charges in amounts other than those currently on file in the Chancellor's office or advertise them without showing the total costs;
 - 12.3.10 Falsely guarantee job placement or employment at a certain wage; or
 - 12.3.11 Use endorsements, commendations, or recommendations by students without their written consent.
- 12.4 A school eligible to offer a course of instruction or program leading to an associate degree or specialized associate degree shall, in any advertisement, promotional material, or the school catalogue refer to this degree designation as an "Associate Degree" or a "Specialized Associate Degree."
- 12.5 Those schools that are accredited by a national or regional accrediting agency recognized by the United States Department of Education may adhere to the accrediting agency's criteria regarding advertising to satisfy the requirements of this section. However, in the event that advertising is not addressed by accrediting agency criteria, the provisions of this section must be followed.

SECTION 13. STUDENT COMPLAINTS

- 13.1 A school shall attempt to resolve student complaints promptly and fairly and shall not subject a student to punitive action as a result of a written complaint having been filed with the school or Policy Commission.
- 13.2 The school shall have written procedures that describe in detail how a student may register a complaint with the school and Policy Commission, and how the school will investigate and attempt to resolve the complaint. A student may file a written complaint by letter or in any other written form.
- 13.3 The Policy Commission will begin the investigation of a written complaint within thirty (30) days of the date of receipt of the complaint unless it is a complaint regarding a matter over which the Policy Commission has no jurisdiction or it is intrinsically not credible. The initial investigation should be completed within sixty (60) days of the filing of the complaint. The investigation will be conducted by the Chancellor or his/her designee.
- 13.4 The school shall provide all enrolled students with a written copy of the student complaint procedures and make prospective students aware that such procedures exist and provide copies upon request.
- 13.5 Each school that is being investigated, as a result of a written student complaint, will be notified by the Policy Commission that such an investigation is being conducted, and a copy of the written complaint will be forwarded to the school. The name of the complainant may be withheld if so requested.
- 13.6 The school being investigated must respond to any inquiry by the Policy Commission relating to the investigation within ten (10) work days of its receipt of the inquiry.
- 13.7 Any school refusing to cooperate with an investigation of a written student complaint by the Policy Commission or any other governmental agency shall have its permit to operate or solicit students in West Virginia revoked in accordance with the ~~due process~~ provisions of Section 14 of ~~these~~ this rule.
- 13.8 The ~~Commission~~ Chancellor, or his/her designee, upon completion of the investigation of a written student complaint, will supply the school by certified mail with a written report of the findings and any proposed corrective action. The school will have twenty (20) work days to reply to the Policy Commission. ~~before any action may be taken.~~
- ~~13.9 The school has a right to request a hearing regarding any findings or action proposed by the Commission resulting from an investigation involving student complaints.~~
- 13.40 ~~9~~ The Policy Commission may forward any information pertaining to a written complaint found to have merit involving student financial aid to the United States Department of Education.
- 13.10 If the school does not take the proposed corrective action the Policy Commission may take what it deems appropriate action under Section 14 of this rule.

SECTION 14. WARNING, SUSPENSION, WITHDRAWAL, or REVOCATION of ACCREDITATION, LICENSE, and/or APPROVAL to OPERATE

- 14.1 A school shall provide the Policy Commission with a copy of any notice of warning, suspension, revocation, or other adverse action received from any national, regional, or state accrediting and/or approval agency or the United States Department of Education within five (5) days of receipt of such notice. The school shall at the same time inform the Policy Commission in writing of activities being taken to correct the deficiencies.

- 14.2 The Policy Commission may for good cause, suspend, withdraw, or revoke the authorization of a school to operate ~~within this state or to solicit students within the state.~~ or solicit students with the state, place a school on probation, order refunds to students, or forfeit the school's surety bonds, or take any other appropriate action. Good cause shall consist of:
- 14.2.1 Loss of accreditation by a nationally or regionally recognized accrediting agency;
 - 14.2.2 Cancellation of the school's bond by the bonding company and failure to secure a replacement in accordance with this rule;
 - 14.2.3 A final determination that the school has engaged in conduct prohibited by this rule, ~~and the conduct warrants suspension, withdrawal, or revocation of the approval to operate a school or solicit students in this state,~~ and any specified corrective action has not been taken within the required time;
 - 14.2.4 Closure of the school without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the institutions contractual obligations to the students;
 - 14.2.5 Conviction of the owner of a school for a felony or crime involving administration of the school or involving Federal Student Assistance programs; or
 - 14.2.6 Refusal to cooperate with an investigation pursuant to Section 13 of this rule.
- 14.3 Upon receipt by the Policy Commission of information constituting any of the above grounds ~~for suspension, withdrawal, revocation, or other adverse action,~~ the Policy Commission shall notify the school and its owner in writing of its intent to recommend suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.
- 14.3.1 The owner of the school 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.
 - 14.3.2 The hearing shall be conducted by the Chancellor of the West Virginia Higher Education Policy Commission or ~~the chancellor's~~ his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia: Provided, that the same person who conducts an investigation pursuant to Section 13 of this rule shall not conduct the hearing.
 - 14.3.3 The Chancellor or ~~the chancellor's~~ his/her designee may continue the hearing at the request of the school for good cause shown. Continuances shall not be granted as a matter of right.
 - 14.3.4 If the owner or a representative of the school 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 school and reported to the Policy Commission for final action.
- 14.4 At the hearing, the grounds for suspension, withdrawal, or revocation of authorization to operate the school or other adverse action must be established by clear and convincing evidence.
- 14.4.1 ~~The owner of the school or its designated representative may appear to defend the interests of the school, may present witnesses and evidence on behalf of the school, and may cross-examine witnesses against the school. The school may retain legal counsel to represent its interests at the hearing.~~

- ~~14.4.2 The Commission does not have the power to issue subpoenas, but the chancellor or the school may request the appearance of witnesses at the hearing, who shall be notified of such request by the chancellor or the chancellor's designee with the date, time, and location of the hearing in writing.~~
- ~~14.4.3 The rules of evidence shall not strictly apply, and evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidence offered by either party shall be ruled upon by the chancellor or the chancellor's designee who conducts the hearing.~~
- ~~14.4.4 The hearing shall be recorded by mechanical means or by a certified court reporter retained by the chancellor.~~
- ~~14.5 The chancellor shall make written findings of fact and conclusions of law as to whether or not the school or its representative has committed acts in violation of the law or these rules which would justify the suspension, withdrawal, or revocation of its authorization to operate. Such findings and conclusions shall be reported to the Commission, and a copy of same shall be provided to the school on the same date it is filed with the Commission and placed upon its agenda for action.~~
- ~~14.6 The Commission shall act upon the report at its next regularly scheduled business meeting to accept or reject the findings of the chancellor or the chancellor's designee, and to suspend, withdraw, or revoke the authority of the school or its representative to operate and/or solicit students within this state. Notification of the Commission's action shall be given to the school and/or its representative in writing within two (2) business days following such action of the Commission, by certified mail, or by personal delivery. For good cause shown in the minutes of the Commission, action upon the chancellor's report may be deferred to a date not later than the next regularly scheduled business meeting of the Commission.~~
- ~~14.7 A school or its representative may appeal an adverse action of the Commission to a court of competent jurisdiction within the time period specified by state law.~~
- 14.5. 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 of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- 14.6. The rules of privilege recognized by the law of this state shall be followed.
- 14.7. 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.
- 14.8. 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 Policy Commission in support of the charges.
- 14.9. The hearing shall be open to the general public.
- 14.10. 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 Policy Commission's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

- 14.11. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- 14.12. The Policy 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.
- 14.13. All parties shall have the right to offer opening and closing arguments.
- 14.14. 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.
- 14.15. 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. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony.
- 14.16. 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.
- 14.17. All reported materials shall be transcribed. The Policy Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties.
- 14.18. 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
- 14.19. At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:
- 14.20. To dispose of procedural requests, prehearing motions or similar matters;
- 14.21. To simplify or settle issues by consent of the parties; or,
- 14.22. To provide for the informal disposition of cases by stipulation or agreement.
- 14.23. The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.
- 14.24. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state
- 14.25. 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 W. Va. Code §29A-5-1(b).
- 14.26. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in section 14.25 of this rule must be received by the Policy 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 W. Va. Code §29A-5-1(b).

- 14.27. Any final order entered by the Policy Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §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.
- 14.28. Findings of fact and conclusions of law shall be recommended to the Policy Commission by the Chancellor or his/her designee and must be approved by a majority of the Policy 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 Policy Commission shall be served upon the school and/or his or her attorney of record, if any, within ten (10) days after entry by the Policy Commission by personal service or by registered or certified mail.
- 14.29. The final order may suspend, withdraw or revoke the permit of the school; place a school on probation; order refunds to students; order forfeiture of the school's surety bond and disbursement of the funds forfeited disbursed to students injured by the school's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Policy Commission, up to and including payment of loans, interest and other charges in connection with school loans, other out-of-pocket damages, and any nominal damages caused a student by the school's violation of this rule or W. Va. Code § 18B-3-5.
- 14.30. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, W. Va. Code §§ 18B-3-5 and 29A-5-1, et seq.
- 14.31. Any relief a student believes he or she was not rightfully awarded by the Policy Commission pursuant to this rule may be pursued in any other appropriate forum.

SUMMARY

TITLE 133

LEGISLATIVE RULE

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 35

CORRESPONDENCE, BUSINESS, OCCUPATIONAL, and TRADE SCHOOLS

This rule establishes procedures for the issuance, renewal, and revocation of permits to correspondence, business, occupational, and trade schools. It includes procedures and requirements for applications for permits, fees, surety bond requirements, maintenance of records, change of school ownership, school closing, student enrollment contracts, cancellation and refund policies, advertising, student complaints, and warning, suspension, withdrawal or revocation of accreditation, license and/or approval to operate.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-35: Correspondence, Business, Occupational and Trade Schools

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.

3. Objectives of These Rules:

This rule establishes procedures for the issuance, renewal, and revocation of permits to Correspondence, Occupational and Trade Schools.

Rule Title: 133-35: Correspondence, Business, Occupational and Trade Schools

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: August 6, 2002

Signature of Agency Head or Authorized Representative:

J. Michael Muller