

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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2009 JAN 26 PM 2: 40

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: W. Va. Code §18B-1D-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 49

TITLE OF RULE BEING AMENDED: Accountability System

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



Authorized Signature

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

FILED

2009 JAN 26 PM 2:40

**SERIES 49
ACCOUNTABILITY SYSTEM**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§133-49-1. General.

- 1.1. Scope: This rule sets forth an accountability system for West Virginia public higher education institutions under the West Virginia Higher Education Policy Commission's jurisdiction.
- 1.2. Authority: W. Va. Code §§ 18B-1-6 and 18B-1D-1
- 1.3. Filing Date:
- 1.4. Effective Date:

§133-49-2. Purpose.

- 2.1. This rule describes the responsibilities of the West Virginia Higher Education Policy Commission (Commission) and public higher education institutions under its jurisdiction to West Virginia taxpayers for the performance of the state public higher education system.
- 2.2. The rule sets forth an accountability system for the Commission and institutions under its jurisdiction.

§133-49-3. Definitions.

- 3.1. "Accountability System." All research, reports, documents, data and any other materials, the collection, analysis and dissemination of which are necessary to accomplish the purpose of this rule. The system includes goals, objectives and priorities, public policy agendas, statewide master plans, state and institution compacts, implementation plans, institutional mission statements and master plans, and the system report card.
- 3.2. "Goal." A long-term public purpose that is a desired and expected end result for which public higher education is established.
- 3.3. "Higher Education Institution" or "Institution." Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College,

West Virginia School of Osteopathic Medicine, West Virginia State University, and West Virginia University, including Potomac State College and West Virginia University Institute of Technology.

- 3.4. "Implementation Plan." A document developed within the higher education community that identifies a series of objectives, sets forth performance indicators that can be used to determine if objectives are being achieved, and outlines strategies over the life cycle of the system master plan.
- 3.5. "Institution Compact." A formal, written contract between the Commission and a state institution of higher education under its jurisdiction expressing intent to accomplish state and system goals and objectives.
- 3.6. "Objective." End to be accomplished or attained within a specified period of time for the purpose of meeting established goals.
- 3.7. "Priority." The order in which objectives are to be addressed for the purpose of achieving state goals.
- 3.8. "Report Card." Report or series of reports that assesses the progress of the Commission and institutions under its jurisdiction toward achieving state, system or institution goals and objectives.
- 3.9. "State Compact." A formal written agreement between the Commission and at least one other external entity to achieve state goals and objectives where significant collaboration and commitment of resources between the partners to the agreement is required in order to achieve the desired results.
- 3.10. "System Master Plan." A document developed by the Commission that sets forth system goals, objectives and strategies and is aligned with, but not limited to, meeting state goals, objectives and priorities.

§133-49-4. System Master Plan.

- 4.1. Development.
 - 4.1.1. The Commission shall develop a system master plan for public higher education institutions under its jurisdiction at least once every five years.
 - 4.1.2. The system master plan shall be developed in collaboration with various parties with an interest in higher education policy,

including institution presidents and administrators, faculty, classified employees and students.

- 4.1.3. Before becoming effective, a proposed system master plan shall be approved by both the Commission and the Legislative Oversight Commission on Education Accountability.
- 4.1.4. At a minimum, the Chancellor shall provide interested parties with at least one thirty-day opportunity to comment on the proposed system master plan before it is taken to the Commission for its approval.
- 4.1.5. Unless replaced or amended by the Commission, the Commission's current system master plan *Charting the Future 2007-2012: A Master Plan for West Virginia Higher Education* shall remain in place through 2012.

4.2. Contents.

- 4.2.1. The system master plan shall address all major goals and objectives for higher education of relevance to institutions under its jurisdiction that are contained in W. Va. Code §§ 18B-1-1a and 18B-1D-3, as well as in other provisions of the West Virginia Code.
- 4.2.2. The system master plan shall include a well-developed analysis of the state of all major components of the public higher education system for which the Commission is responsible, including, but not limited to, institution missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels, and other planning determinants needed for a quality system of higher education.
- 4.2.3. The system master plan shall include a detailed set of system objectives designed to meet all major state goals and objectives as well as to address other issues of importance to the development of a quality system of higher education.
- 4.2.4. The system master plan shall identify a strategy for cooperation and collaboration with the State Board of Education, the State Department of Education, the Council for Community and Technical College Education, higher education institutions and other relevant education providers to assure a comprehensive and seamless system of education in West Virginia.

4.3. Implementation.

4.3.1. The Chancellor shall be responsible for ensuring that the system master plan is implemented.

4.3.2. The Chancellor shall report to the Commission at least annually on progress made in implementing the system master plan.

4.3.3. The Chancellor, on behalf of the Commission, shall report to the Legislative Oversight Commission on Education Accountability no later than in January of each year on progress made in implementing the system master plan.

4.4. Review and Evaluation.

4.4.1. The Chancellor shall review the system master plan annually to determine whether it should be amended to address new state goals and objectives or other issues of importance to public higher education. Any proposed amendment to the system master plan shall be approved by the Commission and the Legislative Oversight Commission on Education Accountability.

4.4.2. Before beginning a new system master planning cycle, the Chancellor shall prepare and submit a comprehensive report to the Commission and the Legislative Oversight Commission on Education Accountability evaluating current system master planning implementation, including:

4.4.2.1. A detailed, data-based analysis of the progress of the system and institutions within the system toward meeting each goal and objective included in the current system master plan; and

4.4.2.2. A strategy for using these data as a basis for developing the new system master plan.

§133-49-5. Institution Compacts.

5.1. Development.

5.1.1. The Commission shall enter into a compact with each higher education institution under its jurisdiction to accomplish state and system goals, objectives and priorities as set forth in the system master plan.

5.1.2. Before the process of developing institution compacts begins, the Chancellor shall identify specific focus areas and proposed outcomes that align with state and system public policy goals, objectives and priorities for institutions to address.

5.1.2.1. The Chancellor may identify focus areas applicable to all institutions or a designated group of institutions.

5.1.2.2. The Chancellor may identify focus areas from which institutions may select only a certain number to address.

5.1.3. Institutions should develop proposed institution compacts in collaboration with as many institution units and constituency groups as possible to increase the likelihood that implementation will be effective.

5.1.4. Before becoming effective, a proposed institution compact shall be approved by the Commission.

5.1.5. Once approved, a compact constitutes a negotiated contract between the state institution of higher education and the Commission.

5.2. Contents.

5.2.1. Each institution compact shall contain a comprehensive assessment of education needs within the institution's geographic area of responsibility, if applicable.

5.2.2. Each institution compact shall identify the institution's mission and address any changes that may be necessary or expedient to the accomplishment of state, system and institution goals, objectives and priorities.

5.2.3. Each institution compact shall explain how the compact aligns with and will be implemented in conjunction with the institution's master plan.

5.2.4. Each institution compact shall address all required focus areas and an appropriate number of elective focus areas, if any. For each focus area that an institution addresses in its proposed compact, the institution at a minimum must discuss:

5.2.4.1. Current performance in addressing the focus area;

5.2.4.2. Goals, objectives and priorities over the course of the compact period;

- 5.2.4.3. Barriers to the accomplishment of the identified goals, objectives and priorities; and
 - 5.2.4.4. Strategies for focusing resources to accomplish the identified goals, objectives and priorities.
 - 5.2.5. Each institution compact shall provide for collaboration and brokering of education services as necessary or expedient to carry out the institutional mission and meet its objectives, as appropriate.
 - 5.2.6. Each institution compact shall address the provision of student services at the optimum level to support the institution mission and compact goals, objectives and priorities.
 - 5.2.7. Each institution compact shall address strategies for using existing infrastructure and resources within each region, where feasible, to increase student access while controlling costs and maintaining academic quality.
- 5.3. Implementation.
- 5.3.1. The institution's board of governors and president shall be responsible for ensuring that the institution compact is implemented.
 - 5.3.2. Each institution shall report to the Commission no later than October 1 of each year on progress made in achieving compact goals, objectives and priorities during the preceding academic year. At a minimum, the progress report shall contain:
 - 5.3.2.1. Outcomes associated with each goal, objective or priority;
 - 5.3.2.2. A summary of strategies undertaken during the previous academic year to achieve each goal, objective or priority, as well as an assessment of the effectiveness of each strategy if the goal, objective or priority was not achieved;
 - 5.3.2.3. A summary of strategies being undertaken during the current academic year to achieve each goal, objective or priority; and
 - 5.3.2.4. Recommendations concerning the modification of institution compact goals, objectives or priorities, which must be approved by the institution's board of governors.

5.3.3. The Chancellor shall develop strategies to assist institutions in accomplishing the goals, objectives and priorities set forth in their respective institution compacts.

5.4. Review and Evaluation.

5.4.1. The Commission shall review each compact progress report no later than December 31 annually to determine whether each institution is:

5.4.1.1. Making sufficient progress in achieving identified goals, objectives and priorities; and

5.4.1.2 Proposing to implement strategies that will produce continued progress in achieving identified goals, objectives and priorities.

5.4.2. If an institution's board of governors requests to modify its institution compact's goals, objectives or priorities, the Commission shall approve or disapprove its request.

5.4.3. If the Commission determines that an institution is not making sufficient progress overall or in a particular area, the Commission may:

5.4.3.1. Direct the institution to modify its compact implementation strategies;

5.4.3.2. Direct the institution to develop an overall remediation plan or a remediation plan in a particular focus area;

5.4.3.3. Direct the Chancellor to work with the institution's board of governors and or president to remedy the deficiencies or to develop a remediation plan;

5.4.3.4. Withhold approval of a salary increase for the institution's president; and/or

5.4.3.5. Take whatever other action ~~the Commission deems~~ consistent with its statutory responsibilities that is necessary or appropriate to ensure that adequate progress is made in the future.

§133-49-6. State Compacts.

- 6.1. In its system master plan, the Commission may identify important state and system goals, objectives and priorities that it and institutions under its jurisdiction acting alone will be unable to accomplish. In such cases, the Commission directs the Chancellor to attempt to enter into state compacts, or contracts, with those external entities.
- 6.2. In determining whether a state compact may be appropriate, the Chancellor shall consider:
 - 6.2.1. Whether significant collaboration with an external entity or entities is necessary or advantageous to increase the likelihood of accomplishing a goal, objective or priority;
 - 6.2.2. Whether an external entity or entities would need to make a significant commitment of resources to accomplish a goal, objective or priority; and
 - 6.2.3. Whether an external entity or entities is/are receptive to entering into a state compact.
- 6.3. At a minimum, a state compact shall:
 - 6.3.1. Identify the parties to the compact;
 - 6.3.2. Identify the term of the compact;
 - 6.3.3. Set forth measurable outcomes the parties seek to achieve by entering into the compact;
 - 6.3.4. Identify what each party will contribute in terms of resources as part of the compact;
 - 6.3.5. Set forth a system for evaluating the success or failure of the compact to achieve the outcomes sought; and
 - 6.3.6. Provide that the failure of one party to the compact to perform excuses the Commission from performance under the compact.
- 6.4. Before a proposed state compact becomes operative and binding on the Commission and institutions under its jurisdiction, the Commission shall approve it.
- 6.5. The Chancellor shall provide a copy of any approved state compact to the Legislative Oversight Commission on Education Accountability.

§133-49-7. Implementation Plans.

7.1. Development.

7.1.1. The Chancellor and/or the Presidents of institutions under its jurisdiction periodically may develop implementation plans to assist in the accomplishment of state, system and institution goals, objectives and priorities.

7.1.2. Implementation plans are internal documents developed among members of the public higher education community and generally are not subject to external approval processes.

7.1.3. Unless specifically mandated by the Commission, a system implementation plan need not be approved by the Commission before being implemented.

7.1.4. Unless specifically mandated by an institution's board of governors, an institution implementation plan need not be approved by the institution's board of governors before being implemented.

7.2. Contents. An implementation plan shall:

7.2.1. Identify the goals and objectives to be achieved;

7.2.2. Identify the parties to the implementation plan and a process for developing consensus among the parties;

7.2.3. Contain a needs assessment or other mechanism to determine the current status of proposed objectives;

7.2.4. Identify challenges or barriers to meeting objectives;

7.2.5. Delineate tasks to be performed;

7.2.6. Contain a specific time line for meeting objectives;

7.2.7. Contain an evaluation process; and

7.2.8. Contain a method for determining success in achieving objectives.

§133-49-8. Institution and System Report Cards.

8.1. Purpose.

8.1.1. A primary purpose of institution and system report cards is to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education.

8.1.2. A primary purpose of the system report card is to provide a mechanism to evaluate the annual progress of the Commission and institutions under its jurisdiction in achieving state and system goals and objectives.

8.2. Contents.

8.2.1. The system report card shall provide information on the performance of state higher education institutions, including health sciences education, in relation to the state and system goals, objectives and priorities.

8.2.2. When possible, the system report shall be based upon information for the current school year or for the most recent school year for which information is available, in which case the year shall be clearly noted.

8.2.3. When possible, the system report card shall break down data by institution, including Potomac State College and West Virginia University Institute of Technology, and by system.

8.2.4. When possible, the system report card shall provide regional and/or national comparison data.

8.2.5. When possible, the information contained in report cards shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations.

8.2.4. The information contained in report cards shall be consistent and comparable between and among higher education institutions.

8.2.5. To the extent practicable, report cards shall be analysis-driven, rather than simply data-driven, and present information in a format that can inform education policymaking.

8.3. Implementation.

- 8.3.1. The higher education central office staff, under the direction of the Vice Chancellor for Administration, shall provide technical assistance to each institution and governing board in data collection and reporting.
- 8.3.2. The president or chief executive officer of each higher education institution shall prepare and submit all requested data to the Commission at the times established by the Commission.
- 8.3.3. The higher education central office staff, under the direction of the Vice Chancellor for Administration, is responsible for assembling the statewide report card from information submitted by each institution.
- 8.3.4. The system report card shall be completed no later than January 1 annually and copies provided to the Commission, the Legislative Oversight Commission on Education Accountability, institution boards of governors, institution presidents and other interested parties.
- 8.3.5. A report highlighting specifically the trends, progress toward meeting goals and objectives and major areas of concern for public higher education, including medical education, shall be prepared for presentation to the Legislative Oversight Commission on Education Accountability no later than January annually.

SUMMARY

TITLE 133

**PROPOSED LEGISLATIVE RULE
HIGHER EDUCATION POLICY COMMISSION**

**SERIES 49
ACCOUNTABILITY SYSTEM**

This rule establishes the responsibilities of the West Virginia Higher Education Policy Commission in the development of statewide master plans, the process of entering into state and institutional compacts, system and institutional implementation plans and state level reporting to ensure that higher education is accountable to the citizens of West Virginia. It addresses topics that are critical to accountability for the state's public higher education system, including economic and workforce development, education access and affordability, innovation, student preparation, degree and/or program completion, intra- and inter- system cooperation and collaboration, research, and teaching and learning.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-49 - Accountability System

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: Attention: Dr. Bruce Flack
1018 Kanawha Boulevard, East, Suite 700, Charleston, WV 25301

Phone Number: 304-558-0261 Email: flack@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule has no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

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

Rule Title: _____

Rule Title: 133-49 - Accountability System

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The rule has no fiscal impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: January 26, 2009

Signature of Agency Head or Authorized Representative



**West Virginia Higher Education Policy Commission
Meeting of January 23, 2009**

ITEM: Approval of Series 49, Accountability System, Legislative Rule

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves Series 49, as amended, as a legislative rule for filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

STAFF MEMBER: Bruce Flack

BACKGROUND:

At its August 1, 2008 meeting, the Commission approved the proposed legislative rule, Series 49, Accountability System, for filing with the Secretary of State for a thirty-day public comment period. While no comments were received, discussion with legislative staff indicated that the Commission would be better served with a rule that provided a more detailed summation of the process by which the Commission and its institutions would develop, implement, and evaluate progression to achieve the goals and objectives set forth in Senate Bill 595, *Vision 2020: An Education Blueprint for Two Thousand Twenty*. This extensive measure sets forth a blueprint for educational advancement for both public education (K-12 schools) and the state's public higher education system.

During the November 21, 2008 meeting, the Commission approved an amended version of Series 49 to be filed with the Secretary of State's office for a thirty-day public comment period.

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

Comment: Subsection 5.4.3.5, which states that the Commission may take whatever action it deems appropriate in its review of institutional compacts, is too broad and potentially gives too much latitude to the Commission.

Response: *To address the concern of overly-broad authority provided to the Commission, the recommendation is to revise subsection 5.4.3.5 as follows: Take whatever other action consistent with its statutory responsibilities that is necessary or appropriate to ensure that adequate progress is made in the future.*

Comment: A comment was received indicating that the language of Series 49, e.g. the definitions, goals and purposes, was often obscure and oblique. The comment also questioned the validity of a common statewide accountability system. The commentator was concerned that what he perceived as vague and ambiguous language in the rule would render unlikely any positive change. A final observation was that commitment to positive change by the Commission was essential to achieving the design of Series 49.

Response: Since Series 49 has been crafted to implement the provisions of Senate Bill 595, including the goals and definitions set forth in Vision 2020, and since the language of the rule is consistent with the language of Senate Bill 595, no additional changes are recommended.

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