

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

Form #5

Do Not Mark In This Box

2010 APR 27 PM 3:47

OFFICE 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: §18B-1B-4 and §18B-10-14

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO

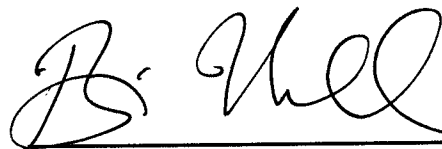
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 51

TITLE OF RULE BEING PROPOSED: Bookstores and Textbooks

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 27, 2010



Authorized Signature

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

SERIES 51

BOOKSTORES AND TEXTBOOKS

FILED

2010 APR 27 PM 3:47

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§133-51-1. General.

- 1.1. Scope - Rule establishing process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.
- 1.2. Authority - - W. Va. Code § 18B-1B-4, 18B-10-14.
- 1.3. Filing Date - - April 27, 2010
- 1.4. Effective Date - - May 27, 2010

§133-51-2. Purpose.

- 2.1. To require institutions to promulgate rules that fully and adequately address the mandates in W. Va. Code § 18B-10-14 regarding the operation of bookstores and the actions of employees of the institution in the selection and adoption of textbooks and course materials.
- 2.2. To require institutions to promulgate rules that will effectuate the mandates regarding textbooks and supplementary course materials set out by Congress in the Higher Education Opportunity Act (HEOA) enacted on August 14, 2008, and any successor to that Act.
- 2.3. To require institutions to promulgate rules addressing the recommendations of the Statewide Task Force on Textbook Affordability contained in the final report of that Task Force jointly adopted by the Higher Education Policy Commission (Commission) and the Council for Community and Technical College Education.

§133-51-3. West Virginia Code Mandates.

- 3.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the statutory mandates of W. Va. Code § 18B-10-14. Specifically, these rules shall, at a minimum:
 - 3.1.1. Provide specific mechanisms to ensure that bookstores operated at institutions under the governing board's jurisdiction minimize the costs to

students for textbooks and course materials. To that end, the governing board rule shall:

3.1.1.1. Commit, to the maximum percent practicable, the number of used books the bookstore will repurchase from students at the end of each semester.

3.1.1.2. Commit, to the maximum percent practicable, a range of percentage repurchase prices based on the new textbook price.

3.1.1.3. Commit, to the maximum percent practicable, to a selection procedure that will ensure certain basic textbooks will be utilized for a reasonable number of consecutive years without new editions being adopted, or selection of basic textbooks where earlier editions are easily and appropriately utilized in the courses.

3.1.2. Prohibit any employee of the governing board from receiving any payment, loan, subscription, advance, deposit or money, service benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook or supplemental course materials, provided, however, that an employee may receive royalties or other compensation from such sales that include the employee's own writing or work. An employee may also receive free sample copies, instructor's copies and instructional material but may not resell those items and retain the proceeds.

3.1.3. Prohibit any employee of the governing board from requiring for any course a textbook that includes his or her own writing or workbook if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written in or removed from the textbook. This does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook.

3.1.4. Provide firm deadlines, to the maximum extent practicable, for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester.

3.1.4.1. For those deadlines not met there shall be a mechanism in place reasonably calculated to ensure that used textbooks, if available, can be located and purchased by the time of enrollment each semester, to the maximum extent practicable.

3.1.4.2. This mechanism should include, but is not limited to, such measures as default selection of certain textbooks, continuing to use the previous textbook, or having a chair or dean select the textbook. Any such textbook default selection must be strictly enforced and faculty not allowed to change the selection.

3.1.5. Provide that a listing of all selected textbooks and materials selected and assigned prior to each semester shall be prominently posted immediately after such selection process is completed and the textbook and course materials are designated for order by the bookstore.

3.1.5.1. In a central location on campus communicated to the student body;

3.1.5.2. In every campus bookstore operated at the institution;

3.1.5.3. On the institution's website; and

3.1.5.4. With the International Standard Book Number (ISBN), edition number and any other relevant information regarding each textbook or supplemental course materials.

3.1.6. Provide that by November 1 of each year, the institution shall report to the Chancellor of the Commission, for the prior fiscal year, the deadlines established for faculty to be assigned to courses; the deadlines for textbooks and course materials to be selected; the percentages of those deadlines met; and the dates the listing of assigned textbooks and course materials were posted pursuant to the requirements of Section 3.1.5 of this rule.

3.1.7. Provide that all revenue the institution receives from a private entity for bookstore operation be utilized for non-athletic scholarships at the institution.

§133-51-4. Federal Mandates.

4.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the federal mandates regarding textbooks contained in the Higher Education Opportunity Act of 2008 (Public Law 110-315). Specifically, these rules shall, at a minimum:

4.1.1. Provide that textbook publishers soliciting any employee of the governing board to select textbooks or supplemental course material provide that employee, in writing:

4.1.1.1. The price of the textbook and supplemental course materials;

4.1.1.2. The copyright dates of the three previous editions, if any;

4.1.1.3. A description of substantial content revisions from the previous editions;

4.1.1.4. Whether the textbook is available in other lower; cost formats and, if so, the price to the institution and the general public;

4.1.1.5. The price of textbooks unbundled from supplemental material; and

4.1.1.6. The same information, to the extent practicable, for custom textbooks.

4.2.1. Provide that no employee of the governing board shall select or assign a textbook or supplemental course materials if the publisher has not supplied the information, in writing, required by Section 4.1.1 of this rule.

4.3.1. Provide that the institution shall provide on its electronic course schedule, or through a link to its bookstore's website, prior to course enrollment each semester for all required or recommended textbooks and supplemental material:

4.3.1.1. The ISBN number and retail price, or if the ISBN number is not available then the author, title, publisher and copyright date.

4.3.1.2. If such disclosure is not practicable, then the designation "To Be Determined."

4.3.1.3. A reference shall be made on any written course schedule to the information available on the electronic course schedule accessible through the institutional website and the internet address for the electronic course schedule.

4.4.1. Provide that the institution will include on its website or through a link to its bookstore's website and electronic course schedule any of its policies or provisions for:

4.4.1.1. Rental of textbooks;

4.4.1.2. The purchase of used textbooks;

4.4.1.3. Textbook repurchase or buy backs; and

4.4.1.4. Alternative content delivery programs.

4.5.1. Provide that the institution will update its policies to comply with any future federal mandates.

§133-51-5. Textbook Affordability Committee.

5.1. Each institution shall establish a permanent Textbook Affordability Committee consisting of faculty, students, administrators and bookstore representatives which shall meet periodically, but at least annually, to advise the faculty senate, student government, administration, and institutional board of governors on affordability issues and initiatives, textbook selection guidelines and strategies, and educational opportunities.

5.2. The governing board shall annually meet with the Textbook Affordability Committee to receive any recommendations or reports it may have generated and copies of any such recommendations and reports shall be transmitted to the Chancellor of the Commission.

§133-51-6. Required Provisions.

6.1. In adopting the policies required by this rule each governing board shall:

6.1.1. Adopt guidelines for faculty in the selection of textbooks and supplementary course materials that ensure appropriate, high quality course materials are selected but give students timely access to the most affordable materials. Institutions are encouraged to consider:

6.1.1.1. Requiring faculty to consider more than one textbook publisher and compare prices for textbooks and course materials;

6.1.1.2. Requiring that all new textbook selections submitted to the appropriate dean or chair for approval be accompanied by a simple form for the faculty member to state whether or not the written information required from the publisher pursuant to Section 4.1.1 of this rule, if requested, was provided;

6.1.1.3. Discouraging selection of textbooks in which less than 50 percent of the content will be used in the course unless the same textbook will be utilized by the student in other courses;

6.1.1.4. Encouraging selection of textbooks that have low cost alternative editions available;

6.1.1.5. Encouraging selection of textbooks it is believed will not be revised by the publisher in the near future;

6.1.1.6. Utilizing consortiums which make available open source textbooks or course materials to faculty and students free or at low cost;

6.1.1.7. Directing an examination of the feasibility of operating a textbook rental program;

6.1.1.8. Providing that the institution shall conduct training for all faculty, at the time of hire and periodically thereafter, on textbook selection and strategies that guarantee high quality course materials at the most affordable cost;

6.1.1.9. Providing that at least one administrator at the institution shall be designated as a liaison with textbook publishers, to be responsible for dissemination of relevant information to the faculty on textbook strategies and education and training opportunities regarding textbook selection, and to enforce the policies the governing board adopts.

6.1.1.10. Providing that the institution, to the maximum extent practicable, consider placing a copy of required textbooks on reserve in the institutional or departmental library;

6.1.1.11. Addressing the issue of providing financial aid to students prior to the start of classes that will allow them to purchase course materials;

6.1.1.12. Addressing the institution's commitment to utilizing various 21st Century technology innovations for the provision of textbooks and course materials, such as electronic textbooks, on-line textbooks, print-on-demand services, open source materials, and institution produced textbooks; and

6.1.1.13. Periodically updating their rules to address emerging technologies or new strategies which address textbook affordability.

§133-51-7. Deadline.

7.1. The rules required by this rule shall be adopted by each governing board within 180 days of the effective date of this rule.

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

SERIES 51

BOOKSTORES AND TEXTBOOKS

§133-51-1. General.

1.1. Scope - Rule establishing process rules governing the selection, adoption, course materials.

1.2. Authority - - W. Va. Code § 18B-1B

1.3. Filing Date - - April 27, 2010

1.4. Effective Date - - May 27, 2010

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3.1.1.3. Commit, to the maximum percent practicable, to a selection procedure that will ensure certain basic textbooks will be utilized for a reasonable number of consecutive years without new editions being adopted, or selection of basic textbooks where earlier editions are easily and appropriately utilized in the courses.

3.1.2. Prohibit any employee of the governing board from receiving any payment, loan, subscription, advance, deposit or money, service benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook or supplemental course materials, provided, however, that an employee may receive royalties or other compensation from such sales that include the employee's own writing or work. An employee may also receive free sample copies, instructor's copies and instructional material but may not resell those items and retain the proceeds.

3.1.3. Prohibit any employee of the governing board from requiring for any course a textbook that includes his or her own writing or workbook if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written in or removed from the textbook. This does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook.

3.1.4. Provide firm deadlines, to the maximum extent practicable, for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester.

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3.1.4.2. This mechanism ~~may~~ should include, but is not limited to, such measures as default selection of certain textbooks, continuing to use the previous textbook, or having a chair or dean select the textbook. Any such textbook default selection must be strictly enforced and faculty not allowed to change the selection.

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3.1.5.4. With the International Standard Book Number (ISBN), edition number and any other relevant information regarding each textbook or supplemental course materials.

3.1.6. Provide that by November 1 of each year, the institution shall report to the Chancellor of the Commission, for the prior fiscal year, the deadlines established for faculty to be assigned to courses; the deadlines for textbooks and course materials to be selected; the percentages of those deadlines met; and the dates the listing of assigned textbooks and course materials were posted pursuant to the requirements of Section 3.1.5 of this rule.

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4.1.1.3. A description of substantial content revisions from the previous editions;

4.1.1.4. Whether the textbook is available in other lower; cost formats and, if so, the price to the institution and the general public;

4.1.1.5. The price of textbooks unbundled from supplemental material; and

4.1.1.6. The same information, to the extent practicable, for custom textbooks.

4.2.1. Provide that no employee of the governing board shall select or assign a textbook or supplemental course materials if the publisher has not supplied the information, in writing, required by Section 4.1.1 of this rule.

~~4.3.1. Provide a penalty for publishers that do not supply the information required by Section 4.1.1 of this rule.~~

4.4.3.1. Provide that the institution shall provide on its electronic course schedule, or through a link to its bookstore's website, prior to course enrollment each semester for all required or recommended textbooks and supplemental material:

4.4.3.1.1. The ISBN number and retail price, or if the ISBN number is not available then the author, title, publisher and copyright date.

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6.1.1.5. Encouraging selection of textbooks it is believed will not be revised by the publisher in the near future;

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6.1.1.9. Providing that at least one administrator at the institution shall be designated as a liaison with textbook publishers, to be responsible for dissemination of relevant information to the faculty on textbook strategies and education and training opportunities regarding textbook selection, and to enforce the policies the governing board adopts.

6.1.1.10. Providing that the institution, to the maximum extent practicable, consider placing a copy of required textbooks on reserve in the institutional or departmental library;

6.1.1.11. Addressing the issue of providing financial aid to students prior to the start of classes that will allow them to purchase course materials; ~~and~~

6.1.1.12. Addressing the institution's commitment to utilizing various 21st Century technology innovations for the provision of textbooks and course materials, such as electronic textbooks, on-line textbooks, print-on-demand services, open source materials, and institution produced textbooks; and

6.1.1.13. Periodically updating their rules to address emerging technologies or new strategies which address textbook affordability.

§133-51-7. Deadline.

7.1. The rules required by this rule shall be adopted by each governing board within 180 days of the effective date of this rule.

Title 133
Proposed Procedural Rule
Higher Education Policy Commission

Series 51
Bookstores and Textbooks

CHANGES MADE BASED UPON COMMENTS

- Section 3.1.1.3 was changed to provide that earlier editions could be utilized if appropriate.
- Section 3.1.4 was changed to require firm deadlines "to the maximum extent practicable" for faculty to be assigned to courses and textbooks to be selected. The change was made to reflect that faculty turnover might make some deadlines impracticable.
- Section 3.1.4.2 was changed to address a comment that the language of the first draft might mislead persons to believe the listed examples were the only options.
- Section 4.3.1 was deleted because of comments that there may be no practical way to penalize publishers.
- Section 6.1.1.2 was changed to address concerns that this requirement might impose too great a burden on faculty. The change provides for a simple form where the faculty member indicates whether requested material was provided.
- Section 6.1.1.13 was added to address concerns that the strategies set out in 6.1.1 for institutions to consider might become outdated.

Other comments submitted and considered, but for which no changes were made, included:

- Faculty do not need a rule to tell them how to select textbooks.
- The concept of a Textbook Affordability Committee at each institution was supported.
- The rule might infringe on academic freedom and is a burden to faculty.
- The collection of the information in 3.1.6 is to burdensome.
- Section 4.1.1 should be deleted until federal rules are adopted.
- Textbook default selections are not feasible or advisable.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bookstores and Textbooks

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301
 Contact: Dr. Brian Noland, Chancellor

Phone Number: 304-558-0699 Email: noland@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.

No 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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Bookstores and Textbooks

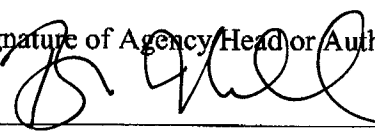
3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There will be no effect on cost or revenue.

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: April 27, 2010

Signature of Agency Head or Authorized Representative


Cindy Anderson

From: Brian Noland
Sent: Monday, February 01, 2010 11:33 PM
To: Cindy Anderson
Cc: Bruce Walker
Subject: FW: Series 51 Bookstores Feedback
Please see below

From: Porto, Enrico [mailto:Rick.Porto@fairmontstate.edu]
Sent: Mon 2/1/2010 5:47 AM
To: Brian Noland
Cc: Lovett, Leslie; Hensley, Sarah; Lavorata, Christina; Thomas Krepel
Subject: Series 51 Bookstores Feedback

Chancellor Noland:

I wanted to let you know that the rules for Bookstore in particular 3.1.7 is in conflict with our Activities Center Bond Covenant.

This bond covenant requires net proceeds from our contracted bookstore operation go to paying for debt service and then operating costs.

This may not require a change to 3.1.7 of series 51 since bond covenants take precedent over rules, and legislation—but I wanted to let you know about this provision in our bond covenant.

Thank you.

Cindy Anderson

From: David Thomas [thomasdj@westliberty.edu]

Sent: Wednesday, February 03, 2010 2:21 PM

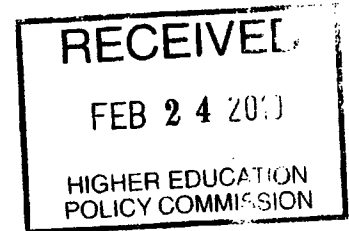
To: Brian Noland

Subject: Series 51

This proposal is much too cumbersome and much too restrictive!

Robert C. Johnson
62 East Main Street
Richwood, West Virginia 26261-1122

304-846-4905



February 22, 2010

VIA USPS and e-mail

Dr. Brian Noland, Chancellor
WV Higher Education Policy Commission
1018 Kanawha Boulevard, East Suite 700
Charleston, West Virginia 25301-2800

Re: Procedural Rule, Title 133, Series 51, Proposed

Dear Chancellor Noland:

This letter is to strongly support the proposed Procedural Rule noted above, and to commend the Statewide Task Force on Textbook Affordability for its continuing work to control educational costs on behalf of students and their parents.

Mandating a deadline prior to the start of each semester for teacher assignment and publication of a list of required textbooks will go a long way in permitting students to shop for competitive pricing.

The establishment of a standing Textbook Affordability Committee at each institution—populated by stakeholders listed in the proposed Procedural Rule—may well help to bring bookstore prices in line with reality. While I fully understand that state college and university bookstores want to maximize revenues, there needs to be some ethical consideration for cash-poor students in the process.

Again, I fully support the content of the proposed Procedural Rule.

Sincerely,

A handwritten signature in cursive script that reads "Robert C. Johnson". The signature is written in black ink and is positioned above the printed name.

Robert C. Johnson

Cindy Anderson

From: Brian Noland
Sent: Wednesday, February 24, 2010 2:03 PM
To: Cindy Anderson
Cc: Bruce Walker
Subject: FW: Comment regarding Proposed HEPC Procedural Rule 51

See attached

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Robert Gall [mailto:rgall@westliberty.edu]
Sent: Wednesday, February 24, 2010 08:22 AM Eastern Standard Time
To: Brian Noland
Subject: Comment regarding Proposed HEPC Procedural Rule 51

Chancellor Noland:

The West Liberty University Faculty Senate passed the following resolution unanimously at yesterday's meeting:

We appreciate the intent of the proposed Procedural Rule 133-51 regarding "Bookstores and Textbooks" but we cannot support this policy in all its details, some of which seem to infringe upon academic freedom, appear impractical, or create an undue burden on faculty or school administration.

Thank you.

Robert Gall, Faculty Senate Chair

Department of Humanities, #130

West Liberty University

West Liberty, WV 26074

Office: 304-336-8189

Fax: 304-336-5396

rgall@westliberty.edu

Cindy Anderson

From: Brian Noland
Sent: Thursday, February 25, 2010 7:17 PM
To: Cindy Anderson; Bruce Walker
Subject: FW: Policy 51 Comments from WVU
Attachments: Policy 51 Comments- WVU.pdf

Please find attached from WVU

From: Traci Liebig [mailto:Traci.Liebig@mail.wvu.edu]
Sent: Thursday, February 25, 2010 9:00 AM
To: Brian Noland
Subject: Policy 51 Comments from WVU

Good Morning Chancellor Noland,

Senior Associate Provost Russ Dean asked me to send these comments. A hard copy will follow in the mail.

Thank you,

Traci

Traci Liebig
Office of the Provost
West Virginia University
206 Stewart Hall
P.O. Box 6203
Morgantown, WV 26506
304.293.5701



West Virginia University

Office of the Provost

February 24, 2010

MEMORANDUM

To: Brian Noland, Chancellor
West Virginia Higher Education Policy Commission

From: Russell K. Dean
Senior Associate Provost

Subject: Comment on *Series 51: Bookstores and Textbooks*

I write this memo in response to HEPC *Series 51: Bookstores and Textbooks* which has been published for public comment. I recently met with a number of West Virginia University's senior academic administrators, faculty leaders, and WVU Bookstore representatives to review Series 51. We considered issues that relate to its ability to both achieve its stated goals and an institution's ability to effectively implement its requirements. At the outset, we compliment you and the Policy Commission for engaging in a serious effort to control the cost of textbooks for our students while assuring that we provide students with course materials that support delivery of a high-quality educational experience.

The following represent suggested changes that we think will strengthen the document. Some of these suggestions are merely editorial while others are more substantive. In general, we are suggesting removal of some of the language that is more prescriptive and detailed while including more general expectations. We suggest that, based upon the guidelines in this policy, institutions submit to your office their proposed textbook policies for review for consistency with Series 51. This step would assure compliance with the overall affordability goals HEPC is trying to achieve. In the following suggestions, I have underlined proposed additions to text.

Section 3.1.1.3 – make the following insertion in the last line, "...earlier editions are easily and appropriately utilized in the courses." We suggest adding "and appropriately" because in some courses the material deals with current law (e.g. special education) and old editions may not be appropriate even if available.

Academic Affairs
Research
Extension and Public Service
Information Technology

Stewart Hall
PO Box 6203
Morgantown, WV 26506-6203

Fax: 304-293-7554
www.wvu.edu/~acadaff/

Equal Opportunity/Affirmative Action Institution

Section 3.1.4 – make the following insertion in the first line, “Provide firm deadlines for the substantial majority of faculty...” We support the goal to have faculty assigned such that textbook selections may be made in time for current students to sell their books back to the bookstore as used books. We suggest this change in language because, with faculty turnover, it is not always possible to have all faculty assigned prior to the deadline for placing book orders.

Section 3.1.4.2 – reduce this section to just, “This mechanism may should, at a minimum, include such measures as default selection of certain textbooks.” The remainder of the sentence may be too prescriptive. Different campuses and even different academic units on a given campus should be given the latitude to develop a specific default selection process.

Section 3.1.6 – delete the language dealing with faculty appointment deadlines and percent of faculty appointed by the deadline. We believe that collection of this information will require substantial time to collect and will distract academic units from their core teaching obligations. The essence of the issue here is whether textbooks are assigned in a timely fashion. Thus we suggest maintaining the language relating to textbook selection deadlines and percentage of deadlines met.

Section 4.1.1 – we suggest deleting this entire section because it is tied to federal rules which have not yet been fully adopted and which may change routinely. We believe that Section 4.1 sufficiently sets the requirement for institutions to be compliant with the HEQA.

Sections 4.2.1 and 4.3.1 – if Section 4.1.1 is deleted then there is no need for these sections. If 4.1.1 is retained, we think that 4.3.1 should be deleted because institutions have no realistic ability to levy penalties against publishers.

Section 6.1.1 – Include only the first sentence plus the following sentence: These guidelines should strongly encourage faculty to consider the cost of competing textbooks when making their selection (especially consider texts with low-cost alternative editions) and consider books with the likelihood that the same edition will be published for multiple years. Many of the other suggestions in this section are time-sensitive and will probably make this policy obsolete in a very short time.

I would be pleased to discuss any of these suggestions with either you or other appropriate HEPC senior staff.

Thank you for the opportunity to comment on this policy proposal.

C: James Clements
Michele Wheatly

Cindy Anderson

From: Tammy McClain [tmcclain@westliberty.edu]
Sent: Wednesday, February 03, 2010 1:42 PM
To: Brian Noland
Subject: Commenting on Proposed Rule HEPC Series 51
Attachments: HEPC Series 51 (1-27-10).pdf

While I think that the intent of this rule is a worthy goal, mainly decreasing costs for students, I have several concerns. First, I believe it is the responsibility of all faculty to choose a textbook that is student-friendly, cost-effective, and which addresses the essential points of the class. I also believe that most of us already do that, and thus do not need another rule telling us to do it. I also don't believe that simply making a new rule will lead those who are not to make a different decision. It just adds another layer of bureaucracy and potentially limits a professors academic freedom to choose the best materials for his/her class. Second, while those who developed this rule know their intent, I am concerned that some may interpret this rule and make decisions to micromanage faculty either by making excessive requirements to prove that each of these issues has indeed been considered or by attempting to dictate what faculty must do. Third, it is the responsibility of administrators to hire qualified, competent professors. If they do this well, they should have no need to police what these professors are doing down to the level of which textbook they choose. Fourth, while I agree that costs for textbooks are excessive, I believe that the publishers have a role in this as they are continually putting out new editions, even when the older editions are still current. It is then difficult for the bookstore to secure enough copies of the previous edition, which forces faculty to switch to another text or require the newest edition. I believe that many of us have tried to find more cost-effective alternatives, including e-books, online resources, and older editions, without sacrificing quality. Thank you for considering my input into HEPC Series 51

From: Mary Ann Edwards
Sent: Wednesday, February 03, 2010 1:20 PM
To: WLFACULTY-L@LISTSERV.WVNET.EDU
Subject: Commenting on Proposed Rule

WL Faculty:

You may recall that in Erik Root's most recent report from the ACF that he urged that comments be sent on a proposed rule from the HEPC regarding bookstores and textbooks (see attachment). Though the Faculty Senate will be addressing this rule at our next Senate meeting (February 16, 2010), the executive committee of the Faculty Senate also urges individual faculty members—both full-time and adjunct—to read through the proposed rule and send comments to the HEPC (deadline March 1, 2010). Comments may be sent by letter to

Dr. Brian Noland, Chancellor
 Higher Education Policy Commission
 1018 Kanawha Boulevard East Suite 700
 Charleston, WV 25301

or by email to Chancellor Noland at

noland@hepc.wvnet.edu

Thank you.

Robert Gall
Faculty Senate Chair

Cindy Anderson

From: Brian Noland
Sent: Friday, February 26, 2010 12:40 PM
To: Cindy Anderson
Subject: FW: Comment on Series 51

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----

From: Erik Root [mailto:eroot@westliberty.edu]
Sent: Friday, February 26, 2010 10:31 AM Eastern Standard Time
To: Brian Noland
Subject: Comment on Series 51

Dear Chancellor Noland,

I want to thank you for the opportunity to comment on Series 51. Communication between the HEPC and the various constituencies in higher ed is important. I can tell you we at WLU appreciate the opportunity for dialogue.

There are many great goals the HEPC supports. Sadly, I must say, WLU cannot support series 51. As you may already know, the WLU faculty senate passed unanimously a resolution that reads:

We appreciate the intent of the proposed Procedural Rule 133-51 regarding "Bookstores and Textbooks" but we cannot support this policy in all its details, some of which infringe upon academic freedom, appear impractical, or create an undue burden on faculty or school administration.

I also realize that you have received, or will be receiving, a letter from WVU on this subject. WLU's general thoughts on this matter is that the series should be rather rejected in total instead of amended. We want to assure you that WLU professors take into account the cost of textbooks when making our reading choices.

I would add that the market has already provided for many of the concerns that series 51 seeks to address. Currently, most publishers offer their textbooks in a variety of forms--paper, hardback, pdf, etc. Many publishers also offer students the opportunity to rent chapters, thus cutting down on their outlay. Regarding electronic textbooks, the series seems not to account for the additional, and very expensive, outlay it may force students to pay in perms of buying technology in order to read their textbooks (Kindle, Ipad, etc). These are not miniscule burdens on our students. Regardless, students have choice. Instead of locking students and teachers into limited options, better to leave well enough alone.

As it pertains to professors, it may actually harm instruction. It is unclear how publishers will react to such requirements. If the cost and regulation on their business be too great, professors will lose by having, perhaps, a most important reading out of reach. This is especially true because it is unclear whether these regulations pertain to upper division courses.

I do not want to belabor you, and thank you for the opportunity to offer an opinion on series 51. If you need clarification (or if, in some way I have erred in the assessment of the series), please let me know.

Finally, I want to thank you for your continued support of faculty interests, and your gracious treatment of the ACF.

Best Regards,

-Erik

--

Erik S. Root, Ph.D

Asst. Prof. Political Science

Chair of Economic Philosophy

ACF Representative/Vice Chair (<http://www.wvacf.org>) Senior Fellow--Government Policy

Research Center West Liberty University

304-336-8003

<http://faculty.westliberty.edu/eroot>

Cindy Anderson

From: Brian Noland
Sent: Sunday, February 28, 2010 9:48 PM
To: Cindy Anderson; Bruce Walker
Subject: FW: Comments on Proposed Series 51, Bookstores & Textbooks

Attachments: TextbookProceduralRuleComment_Kite.doc



TextbookProcedural
RuleComment_...

Please see below and attached

-----Original Message-----

From: Steve Kite [mailto:jkite@wvu.edu]
Sent: Sunday, February 28, 2010 9:30 PM
To: Bruce Walker
Cc: Brian Noland; Ashley Schumaker; Steve Kite
Subject: Comments on Proposed Series 51, Bookstores & Textbooks

Bruce,

I am attaching a comment on Proposed Procedural Rule Series 51, Bookstores & Textbooks, for your consideration.

Please let me know if my comments need any clarification.

All the best,

Steve

J. Steven Kite
Dept. of Geology & Geography
G43 Brooks Hall
Morgantown, WV, USA 26506-6300

304-293-9819



Department of Geology and Geography

West Virginia University

Eberly College of Arts and Sciences

28 February 2010

Bruce Walker, General Counsel
West Virginia Higher Education Policy Commission
1018 Kanawha Blvd E Ste 700
Charleston WV 25301-2800

Dear Bruce,

As you know, I had the great fortune of serving on the Statewide Task Force on Textbook Affordability. It was an enjoyable group, and although we did come together with a variety of strong opinions, I feel that we fashioned a document that will help keep higher education textbook costs down throughout the state. I am in agreement with the substance of the report and a majority of the HEPC's proposed procedural rule, Series 51, Bookstores and Textbooks that was developed from it.

I particularly favor item 5.1., which states "Each institution shall establish a permanent Textbook Affordability Committee ..." Some may be disinclined to form "yet another" committee, but great progress can stem from educating faculty and students on relatively simple steps proven to reduce costs, such as early adoption, negotiation of discounts for high-quantity adoptions, and alternative materials and formats. Textbook Affordability committees will offer effective high-profile pulpit to communicate cost-saving ideas, not only to governing boards as outlined in item 5.2, but also to the faculty senates at the institutions.

There is one aspect of the proposed procedural rule for which I have serious concerns. My concern stems from my ineffectiveness at making convincing points near the end of the long teleconference where we hammered out contents of the Task Force report. At issue is this section on the agenda:

6.1.1.2. Requiring that all new textbook selections submitted to the appropriate dean or chair for approval be accompanied by the written information required from the publisher pursuant to Section 4.1.1 of this rule;

If institutions adopt 6.1.1.2 as a guidelines, this reporting requirement could translate into great effort in photocopying or reproduction of data into forms. I am unconvinced that faculty reports of information provided by the publishers could ever be used by the institutions or HEPC in a meaningful way. At large research universities, such guidelines could apply to thousands of text adoptions, including classes requiring inexpensive trade books for which publishers are unlikely to provide HEOA-required information.

I fear that this reporting requirement would (1) push faculty into adopting more expensive books from textbook publishers, when common trade books would suffice, (2) delay submission of textbook adoptions and reduce our ability to provide inexpensive used textbooks, and (3) cast an "onerous" label on these HEPC rules in general that may reduce compliance with other sections.

If implemented as a campus rule, 6.1.1.2 would be a loss to students and textbook-purchasing parents, rather than a gain. It would be prudent to remove this item from the HEPC procedural rule.

Sincerely,

Dr. J. Steven Kite

C: Brian Noland, Chancellor

Cindy Anderson

From: Brian Noland
Sent: Tuesday, March 02, 2010 9:11 AM
To: Cindy Anderson; Bruce Walker
Subject: FW: Procedural Rule Series 51

Please see below

From: Mary Rogerson [mailto:rogersma@westliberty.edu]
Sent: Monday, March 01, 2010 12:57 PM
To: Brian Noland
Subject: Procedural Rule Series 51

Dr. Brian Noland, Chancellor
Higher Education Policy Commission
1018 Kanawha Boulevard East, Suite 70
Charleston, WV 25301

Dear Dr. Noland:

Concerning the proposed HEPC Procedural Rule regarding bookstores and textbooks (Series 51), I would like to make the following observations. First, West Liberty University already has procedures in place regarding the ordering and selection of textbooks. The bookstore provides information about the selections, prices, and ISBNs for each course online, and deadlines are in place for ordering textbooks. The bookstore also has a method to determine the number of textbooks to repurchase.

As faculty, we certainly consider cost and textbooks from different publishers. However, we have no control over how often a publishing company changes to a new edition. Once a new edition is out, previous editions are only available for a limited time. As Section 4.1.1 specifies, a new edition automatically comes with information regarding changes that have been made, usually in a "To the Instructor" section in the preliminary pages of the new edition. Many of us are not eager to change editions, because that means making many other changes in course outlines and preparation. Using an older edition is fine if it is available, but a student using a different edition from the rest of the class will not have all the assigned reading material.

Section 3.1.2. mentions receiving incentives from publishing companies to select a certain text. None of my colleagues, so far as I know, does this. We receive sample copies at times, but that does not necessarily indicate that one of those texts will be selected. It allows us, however, to review the variety of available materials and see new information. Changing the selection process would hamper our ability to use a different text to incorporate new material. Often, a different text is ordered only when a new edition is issued, and some changes will have to be made anyway.

A textbook default selection does not seem feasible or advisable. Most of us have certain areas that we have more experience in than others. For instance, in literature, each of us has studied more extensively in some areas than others. Having someone else make the decision for a textbook stifles a professor's freedom to shape the courses to his or her strong points, while still remaining within the parameters specified for each course.

It seems to me that almost everything mentioned in the policy is already being done. Faculty should be able to exercise their academic freedom and select course materials to fit the course requirements that they personally are comfortable with. Professors have different personalities and relate, at least in literature, to different genres and approaches to literature. While still keeping in mind continuity in texts, cost, and other factors mentioned, we need to be able to select our own textbooks.

Sincerely,

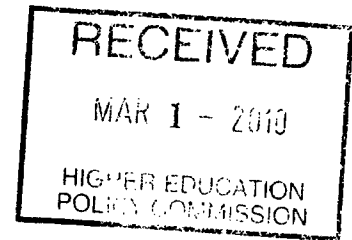
Mary L. Rogerson
Senior Adjunct Lecturer
Department of Humanities
West Liberty University
West Liberty, WV 26074

email: rogersma@westliberty.edu Phone: (304) 336-8198



West Virginia University

Office of the Provost



February 24, 2010

MEMORANDUM

To: Brian Noland, Chancellor
West Virginia Higher Education Policy Commission

From: Russell K. Dean
Senior Associate Provost

Subject: Comment on *Series 51: Bookstores and Textbooks*

I write this memo in response to HEPC *Series 51: Bookstores and Textbooks* which has been published for public comment. I recently met with a number of West Virginia University's senior academic administrators, faculty leaders, and WVU Bookstore representatives to review Series 51. We considered issues that relate to its ability to both achieve its stated goals and an institution's ability to effectively implement its requirements. At the outset, we compliment you and the Policy Commission for engaging in a serious effort to control the cost of textbooks for our students while assuring that we provide students with course materials that support delivery of a high-quality educational experience.

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Equal Opportunity/Affirmative Action Institution

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I would be pleased to discuss any of these suggestions with either you or other appropriate HEPC senior staff.

Thank you for the opportunity to comment on this policy proposal.

C: James Clements
 Michele Wheatly

**West Virginia Higher Education Policy Commission
Meeting of April 23, 2010**

ITEM: Approval of Final Series 51, Bookstores and Textbooks

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved, That the West Virginia Higher Education Policy Commission approves Series 51, Bookstores and Textbooks, for final filing with the Secretary of State.*

STAFF MEMBER: Bruce Ray Walker

BACKGROUND:

At the January 22, 2008 meeting, the Commission directed the Chancellor to work with the Chancellor for Community and Technical College Education to appoint a Statewide Task Force on Textbook Affordability. This entity, co-chaired by Ms. Kay Goodwin and Mr. Nelson Robinson, held several meetings and multiple public forums across the state. At the August 7, 2009 meeting, the Commission received the final report and recommendations of the Task Force.

The attached draft rule requires that the governing boards, in adoption of their own rule, take the following actions:

- Require institutions to address the mandates in West Virginia Code § 18B-10-14 regarding the operation of bookstores and the actions of employees in adoption of textbooks and course materials.
- Require institutions to promulgate rules that will effectuate the mandates in the federal Higher Education Opportunity Act.
- Require institutions to address the recommendations of the Task Force.
- Require deadlines for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester, with some mechanism put in place for a default selection of textbooks if deadlines are not met.
- Require annual reports to the Chancellor on deadlines and percentage of those meeting the deadlines.
- Require a Textbook Affordability Committee at each institution to advise the governing board.

- Consider a number of nationally recognized strategies that have been identified as reducing increased textbook and course material costs.
- Place a deadline on a governing board to adopt new rules addressing the requirements of this rule.

At the January 25, 2010 meeting, the Commission approved filing the rule for an official thirty-day comment period. Several comments were received and changes were made to the proposed rule in order to provide additional clarification to address expressed concerns. A summary of the comments and the proposed changes follow this agenda item.

It is recommended that the Commission approve Series 51, Bookstores and Textbooks, for final filing with the Secretary of State.