

## **Marshall University Classified Staff Council Minutes**

July 18<sup>th</sup>, 2013, MSC 2E37 – John Spotts Room

**Members Present:** Chris Atkins, Nina Barrett, Tootie Carter, Amanda Dailey, Stacy Good, Carol Hurula, Noah Lamb, Leonard Lovely, Lisa Maynard, Jan Parker, Kelly Preston, Marcos Serrat, Joe Wortham, Miriah Young

**Members Absent:** Amber Bentley, Toni Ferguson, Amy Lorenz, Amanda Nagy, Valerie Smith, Nancy Tresch-Reneau, Teresa Wellman, Lisa Williamson

**Members Absent (Excused):**

**Guests:** Dr. Kopp, Matt Turner, Michelle Douglas

The meeting was called to order by Chair Nina L. Barrett.

### **Dr. Kopp – University President**

- There have been 8 days so far of freshman and new student orientations and the feedback from parents has been very well received. Also, domestic student enrollment is on par with where we were last year.
- We currently have around 150 confirmed enrollments with the INTO project and the goal is to try and get over 200 enrolled. There are also approximately 14 students coming from Brazil for the Science without Borders program.
- The East Hall project continues and all other capital projects are on schedule and on budget. The Fine Arts facility downtown is progressing as they're basically rebuilding the building from the inside out.
- The soccer stadium will open towards the end of August. It will be a great facility for Marshall and also be a community resource as well when the City hosts the regional soccer tournament next year for teams from Main to Virginia and they use the stadium for championship games.
- The State of the University event in Washington, DC was in June and was well attended. It was hosted in a museum in downtown Washington, DC across from the Capitol.
- Dr. Kopp reported that they are in the process of planning and recruiting for next year. They're going to hire a firm to help with a comprehensive plan for marketing.
- The School of Medicine had a focus visit at the end of June and Dr. Kopp feels we did very well although there hasn't been an official report yet.
- Dr. Kopp reported that they got a letter from the ACPE on candidate status for second phase of accreditation for the School of Pharmacy. This is the candidate status we will remain at until we're ready to graduate our first class. If the pharmacy school continues on the track it's on it will become fully accredited. We can't apply for accreditation until they have their first graduating class which will happen one year from now for Physical Therapy and two years from now for the School of Pharmacy.

- Dr. Kopp shared that they have spent a lot of time looking at future funding and support for the University. He's looking at things 5 to 10 years out and believes there will be another significant budget reduction in appropriations unless the State takes action in the next legislative session. He also stated that things look bad for fiscal year 2018 when the federal government begins backing out of their subsidization of the Medicaid expanded coverage as part of the Affordable Care Act and the costs will shift to the State.
- Dr. Kopp mentioned that there was a bill introduced in both the House and Senate this last legislative session for performance funding and he believes it will eventually happen. It would work by universities keeping their funding by meeting certain measures and losing funds by not meeting certain measures. The bill that was introduced this year phased in the system with 5% of state appropriations at risk the first year and an additional 5% each year thereafter until 25% of state appropriations were at risk. With regards to budgeting that would mean that 25% of the state appropriations would have to be treated as one-time money each year and couldn't be used for recurring expenditures.
- Dr. Kopp stated that the challenge going forward is how we're going to respond with a more limited resource environment and still fulfill all the things we're expected to fill as our mission. He wants to put planning groups together to strategize how we'll address these challenges.
- Dr. Kopp reported that we're having an Economic Study done by CBER (Center for Business and Economic Research) and would like to get it done by early fall. Dr. Kopp believes it could be a tool for us to continue to make our case in Charleston about continued public support.
- The Master Planning process by Smith Group is a statutory requirement every 10 years and the goal is to have a report to HEPC by early December.
- There has been a change in House Speaker; Tim Miley is the new Speaker and some committee chairs will change as well.
- American and Bloom judges were here and the feedback so far was that they were impressed with Huntington, and couldn't say enough good things about Marshall; particularly the appearance and sustainability programs.
- Steve Hensley's tech group has developed a special orientation for students who need help with blackboard and it will take place during the Week Of Welcome.
- Marshall is hosting the bridge program again this summer and it's packed. It's Marshall's second year doing the program which is designed for students who would otherwise begin college in 098 or 099 math, and English classes below the 100 level because of deficiencies in test scores. Last year's rates for retention of students who attended were good. The goal is to get them starting 100 levels courses their first semester.

Dr. Kopp opened the floor to questions.

*Is there parking at new soccer field – Carol Hurula – Yes, quite a bit.*

### **Ms. Michelle Douglas – Human Resources**

- PEIA has crossed over to Wage Works for health savings accounts. Michelle stated they seem to be very email driven and more user friendly. She's interested in any feedback.
- Michelle said it's a good idea to check everything as far as withholdings, pay, your Marshall Health statements, etc. to make sure everything is correct.
- Michelle reported she's created an ACA (Affordable Care Act) group since it will affect how we hire people. There will be changes in how we hire adjunct faculty, extra help, student help, etc. and she stated they're getting direction from the HEPC and administrative rules may come out.
- The Tobacco Ban is active and Michelle reported they're working on how they plan to enforce it. Also, Judy Blevins has contacted the School of Medicine about cessation activities and how Marshall can get involved with providing cessation support.

### **Approval of Minutes**

May 16<sup>th</sup> minutes were approved as written.

### **Officer Elections**

- Nina opened the floor to nominations for the position of 1<sup>st</sup> Vice Chair. Carol Hurula nominated Chris Atkins. No more nominations were made so a motion to close was made. Motion passed.
- Nina opened the floor to nominations for the position of 2<sup>nd</sup> Vice Chair. Miriah Young nominated Lisa Maynard. No more nominations were made so a motion to close was made. Motion passed.

### **Committee Placements**

Nina appointed committee members as follows:

#### **Legislative Affairs**

Chris Atkins – Chair

Other members to be chosen by Mr. Atkins

#### **Personnel/Finance**

Leonard Lovely – Chair

Noah Lamb

Stacy Good

Valerie Smith

Amber Bentley

Staff Development/Service

Miriah Young – Chair  
Carol Hurula  
Jennifer Jimison – non-council member  
Lisa Maynard  
Shay McComas – non-council member  
Amy Lorenz

Physical Environment

Lisa Williamson – Chair  
Amanda Nagy  
Marcos Serrat  
Nancy Tresch-Reneau  
Teresa Wellman

Elections/Communications

Joe Wortham – Chair  
Amanda Dailey  
Toni Ferguson  
Jan Parker  
Tootie Carter

**ACCE – Carol Hurula**

ACCE RETREAT

Jean Lawson, Senior Policy Analyst provided a history of Higher Education Legislation from 1989 – 2013 highlighting particular bills and their importance. (See attachments) She said policy making is like the pendulum on a clock swinging back and forth, back and forth. What is attempted one year may be reversed later by another group. She discussed SB 622 and all the flurry of activity that happened over the weekend after the bill was introduced on Friday. She said there was a lot of scrambling that took place on Monday and it's a lot of trouble to have your name removed from a bill but that two representatives did so.

Jean is an amazing staff member, having written and drafted many of the bills, established and set on committees and has a wealth of knowledge that will be greatly missed by employees of higher education when she retires in September after 31 years of service. She spoke of many nights being one of the last people to leave the Capitol at 2am. Jean's replacement will be Melissa White, an attorney who has never worked in the legislation or higher education so she will need some time to become familiar with her new job.

Scans from some interesting information Jean distributed are attached.

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ACCE is hoping to update their web-site and have reviewed several different web versions / hosts. The intent is to get a user friendly version that a couple of representatives can update as needed when the one person that currently maintains isn't available. Chris Stevens at Mountwest has volunteered to assist with this project.

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ACCE discussed Classified Staff Councils at all institutions. Many have a difficult time getting staff to participate and some councils don't meet on a regular basis. One particular institution mentioned that council members didn't want to attend if their CHRO is present among many other issues.

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Jean Lawson made a presentation on Rule-Making. (See Attachments). The "commission" HEPC and the "council" CTC calls RULES a policy. Whether they are called Series or Policy – they are RULES.

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Vice Chancellor of Human Resources Mark Toor stated that Trish Clay has been hired as the Director of Classification and Compensation and started July 16<sup>th</sup>. Mark's first agenda for Trish is to send her to Minnesota to review with Fox Lawson all items on the RFP and provide a report to Mark on the progress and what Fox Lawson intends to provide. They anticipate information in 4 months but will better understand what to expect after Trish's visit. Mark is still working on the salary rule with the common grounds committee. He wants to have all the details worked out by the time Fox Lawson submits the relative market equity information. The salary rule will address items that may be in the new classification recommendation providing limits that an institution can hire someone in above the floor limit. If above a certain percentile the VCHR will have to review as well as the CPRC. The salary rule will provide the process for this.

Mark discussed in depth the Fox Lawson RME survey. An area he wants to further study/discuss and review was the methodology for the marginal error. Currently in code it stated we have to be within 5% of each class. If the margin for error is more than that – some will dispute its validity.

SB 330 (2011) 18B-9A-

- (a) Sweeping cultural changes are needed to implement the recommendations of the Select Committee on Higher Education Personnel and the provisions of this article and articles seven, eight and nine of this code. **These kinds of changes require dedication and cooperation from all employee classes across the two systems of public higher education, the commission, council and state policymakers.** The primary responsibility for implementation, however, rests with the commission and the council who shall provide leadership and assistance to the human resources professionals within each organization to bring about the changes successfully.

Fox Lawson is to provide the RME and a classification recommendation. We know that the model will not have years of service ladder as it currently does. Some indications are that there will be fewer pay grades (dropping 1-6). There will possibly be a minimum floor, medium, 25<sup>th</sup>, 50<sup>th</sup>, 75<sup>th</sup> percentile. Another possibility is to award different entry rates for new hires per pay grade dependent on degree, degree relative to job, years of service and/or years of svc at state agency.

The salary rule will be written to include current hires and crediting them the same as new hires at the time of their annual performance evaluation for any related degree, etc. Also in the salary rule will be how to progress along the floor, medium, percentile(s). For example:

Salary increases divided into 3 categories. i.e. institution to provide 6% raise it would be divided into 2% each category below.

Cost of Living

Career Enhancement

Performance (evaluations) meet expectations – meet raise  
Exceeding expectations – larger raise  
Doesn't meet expectations – no raise

Each Institution will need to develop its own institutional salary rule. If an institution can't provide 6% but would propose 4% they could then do 2% COL and 2% performance and no career enhancement. All depends on how the institutional policy is written as it relates to the salary rule. (All this is yet to be determined).

Hot Jobs will be part of the salary rule. JCC will determine hot jobs; which could also be determined by college instead of state wide.

Once the Fox Lawson RME is received, each institution will need to establish a plan to get to RME within 3 years as noted in SB330. Since this may not be realistic financially at each institution, an institutional policy should be defined and noted as to how they will achieve RME for each class. This will possibly also be addressed in the salary rule and/or legislation.

Raise pool could be segregated into five pots.

1. Promotion of faculty (in state code)
2. Funds for hot jobs
- 3 – 5. What remains will be applied to RME (cost of living, career enhancement, performance).

Some institutions may have to put all toward one pot if one class of employee (faculty, non-classified, classified) is not within 5%. So there may be increases for year(s) that will address only one class of employees which is something to keep in mind.

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It now appears that WVOASIS are willing to interface People Admin with NeoGOV. NeoGOV doesn't appear to be as in-depth as People Admin. Mark made this proposal to Senator Plymale to find the funds needed to interface.

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Grievance Procedure (See Attachments). Chair Amy Pitzer discussed how she handles grievances on her campus. She said they had 3-4 years of bad administration and they filed many grievances. She said first and foremost always attempt to resolve the issue and hear the employee out. She always keeps her CHRO informed and involved. If she has an employee in her office with issues, she calls the CHRO and asks him to join her and hear the issue at hand. They work together and attempt to resolve the problem. They file a grievance if a violation of rule exists and it isn't able to be resolved with supervisor or administration. She said she has had to tell many employees they have no reason to grieve. She won't be an advocate if she feels no rule or policy has been violated. She has filed 100's of grievances both on her campus and others. She has never lost a grievance. She said you must do your homework, look at state rule and know the issue. She provided many in-depth examples and ACCE reviewed the grievance board web-site which has all kinds of information available.

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ACCE re-elected Amy Pitzer as Chair  
Elected – Terri Wells as Vice Chair  
Elected – Carol Hurula as Secretary

ACCE established the calendar for the year and they will be meeting on the Marshall campus 10/24/13 in the Shawkey Room.

ACCE met at Pipestem State Park and adjourned at 1:45pm.

### **Announcements**

Katie is working on new notebooks and will hopefully have them to hand out at the August meeting.

Chris Atkins is working on the new Staff Council Newsletter and hopes to get the first edition out very soon.

Miriah reported that the Board of Governor's would meet on July 31<sup>st</sup> to decide how Marshall's additional investment authority will be spent.

Katie Counts announced that the Staff Council's Office hours have changed. She is in the office from 7:30am-5pm on Tuesdays and Thursdays, and can be reached on Mondays, Wednesdays and Fridays by phone or email from 8am-12pm.

There being no more business, the meeting was adjourned.

Minutes taken and prepared by: \_\_\_\_\_  
Katie M. Counts, Program Assistant, Staff Council

Minutes approved by: \_\_\_\_\_  
Nina L. Barrett, Chair, Staff Council

Minutes read by: \_\_\_\_\_  
Stephen J. Kopp, University President

## HIGHER EDUCATION POLICY COMMISSION

### Rules and Policies

#### PROPOSED RULES

There are no proposed rules at this time.

#### RULES

- Series 1:** Performance Indicators - Legislative Rule - Final - Effective April 9, 2002.
- Series 2:** Higher Education Finance Policy - Legislative Rule - Final - Effective July 1, 2001.
- Series 3:** Report Card - Legislative Rule - Final - Effective April 9, 2002.
- Series 4:** Rules and Administrative Procedures - Procedural Rule - Final - Effective April 19, 2013.
- Series 5:** Guidelines for Governing Boards in Employing and Evaluating Presidents - Legislative Rule - Final - Effective May 14, 2009.
- Series 6:** Higher Education Adult Part-Time Student (HEAPS) Grant Program - Legislative Rule - Final - Effective April 6, 2004.
- Series 7:** West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship - Legislative Rule - Effective April 21, 2010.
- Series 8:** Personnel Administration - Procedural Rule - Final - Effective on November 22, 2001.
- Series 9:** Academic Freedom, Professional Responsibility, Promotion and Tenure - Procedural Rule - Final - Effective September 20, 2007.
- Series 10:** Policy Regarding Program Review - Procedural Rule - Effective October 10, 2008.
- Series 11:** Submission of Proposals for Academic Programs and the Monitoring and Discontinuance of Existing Programs - Procedural Rule - Final - Effective July 24, 2011.
- Series 12:** Capital Project Management - Procedural Rule - Final - Effective December 25, 2001.
- Series 13:** Change in Organization of Colleges and Schools - Procedural Rule- Final - Effective April 19, 2002.
- Series 14:** Holidays - Procedural Rule - Final - Effective April 19, 2002.
- Series 15:** Acceptance of Advanced Placement Credit - Legislative Rule - Final - Effective June 22, 2002.
- Series 16:** College Level Examination Program - Procedural Rule - Final - Effective June 22, 2002.
- Series 17:** Transferability of Credits and Grades at the Undergraduate Level - Procedural Rule - Effective February 15, 2010.



- Series 18:** Assignment of Academic Credit and Financing Noncredit Instruction - Procedural Rule - Final - Effective June 22, 2002.
- Series 19:** Guidelines for College Courses for High School Students - Procedural Rule - Final - Effective May 27, 2010.
- Series 20:** Initial Authorization of Degree-Granting Institutions - Legislative Rule - Final - Effective May 2, 2013.
- Series 21:** Freshman Assessment and Placement Standards - Procedural Rule - Final - Effective September 30, 2010.
- Series 22:** Grade Point Average for Associate and Baccalaureate Degree Students - Procedural Rule - Final - Effective August 1, 2002.
- Series 23:** Standards and Procedures for Undergraduate Admission - Procedural Rule - Final - Effective March 8, 2013.
- Series 24:** Preparation of Students for College - Procedural Rule - Final - Effective August 10, 2002.
- Series 25:** Residency Classification for Determining Tuition and Fees - Procedural Rule - Final - Effective August 1, 2002.
- Series 26:** Underwood Smith Teacher Scholarship Program - Legislative Rule - Final - Effective April 27, 2005.
- Series 27:** Financial Assistance to Athletes - Procedural Rule - Final - Effective August 1, 2002.
- Series 28:** WV Engineering Science and Technology Scholarship Program - Legislative Rule - Final - Effective April 27, 2005.
- Series 29:** Travel - Procedural Rule - Final - Effective August 1, 2002.
- Series 30:** Purchasing - Procedural Rule - Final - Effective January 21, 2005.
- Series 31:** Ethics - Procedural Rule - Final - Effective August 1, 2002.
- Series 32:** Tuition and Fee Policy - Legislative Rule - Final - Effective June 4, 2012.
- Series 33:** Anatomical Board - Interpretative Rule - Final - Effective September 6, 2002.
- Series 34:** Medical Student Loan Program - Legislative Rule - Final - Effective May 14, 2009.
- Series 35:** Correspondence, Business, Occupational, and Trade Schools - Legislative Rule - Effective April 3, 1995 (transferred from previous boards).
- Series 36:** Sports Programs at Community and Technical Colleges - Procedural Rule - Final - Effective January 8, 1980 (transferred from Board of Directors).
- Series 37:** Increased Flexibility for Community and Technical Colleges - Procedural Rule - Final - Effective June 12, 2000 (transferred from Board of Directors).

- Series 38:** Employee Leave - Procedural Rule - Final - Effective November 19, 1992 (transferred from previous boards).
- Series 39:** Classified Employees - Procedural Rule - Final - Effective September 5, 1996 (transferred from previous boards).
- Series 40:** Equal Opportunity and Affirmative Action - Procedural Rule - Final - Effective April 3, 1992 (transferred from previous boards).
- Series 41:** Health Sciences Scholarship Program - Procedural Rule - Final - Effective January 19, 2003.
- Series 42:** WV Higher Education Grant Program - Legislative Rule - Final - Effective May 14, 2009.
- Series 43:** Purchasing Efficiencies - Legislative Rule - Final - Effective April 6, 2004.
- Series 44:** Policy Regarding Action to be Taken on Audit Reports - Procedural Rule - Final - Effective September 12, 1972 (transferred from University System Rule).
- Series 45:** Community and Technical College Faculty Instructional Load - Procedural Rule - Final - Effective April 5, 2004.
- Series 46:** Standards for Subject-Area Content in Secondary Level Teacher Preparation Programs - Procedural Rule - Final - Effective December 23, 2004.
- Series 47:** Commission Organization and Meeting - Procedural Rule - Final - Effective Date July 22, 2011.
- Series 48:** Research Trust Fund Program - Legislative Rule - Final - Effective May 18, 2009.
- Series 49:** Accountability System - Legislative Rule - Final - Effective May 14, 2009.
- Series 50:** Energy and Water Savings Revolving Loan Fund Program - Legislative Rule - Effective April 21, 2010.
- Series 51:** Bookstores and Textbooks - Procedural Rule - Final - Effective May 27, 2010.
- Series 52:** Annual Reauthorization of Degree-Granting Institutions - Legislative Rule - Final - Effective May 2, 2013.
- Series 53:** Human Resources Administration - Legislative Rule - Final - Effective May 2, 2013.

All **Administrative Bulletins** were abolished by the Policy Commission on April 19, 2002.

All **Procedures** except Procedure No. 19 were abolished by the Policy Commission on April 19, 2002. Procedure 19 was suspended on April 24, 2003

#### **Chancellor's Interpretive Memoranda**

- No. 1** - Collection of Interest on Installment Payment of Tuition and Fees -PDF.

- No. 2 - Cash Advance Requests -PDF.
- No. 3 - Internal Hiring of Non-Exempt Classified Employees -PDF.
- No. 4 - Non-Classified Status for Positions Considered Critical to the Institution -PDF.
- No. 5 - Grievance Process for Faculty, Classified Employees and Administrators -PDF.
- No. 6 - Application of Rules and Policies -PDF.
- No. 7 - Constituent Representatives of Board of Advisors - (Now addressed in WV Code).
- No. 8 - Increased Flexibility for Community and Technical Colleges - (Replaced by Series 37 - see above list of Rules).
- No. 9 - Interim Guidelines for Capital Projects and Investments - (Replaced by Series 12 - see above list of Rules).
- No. 10 - Policy on Submission of Proposals for New Academic Programs and the Discontinuance of Existing Programs (Replaced by **Series 11** - see above list of Rules).
- No. 11 - Policy Regarding Program Review (Replaced by Series 10 - see above list of Rules).
- No. 12 - Procedure for Adoption of Policy - (Replaced by Series 4 - see above list of Rules).
- No. 13 - Policy on Freshman Assessment and Placement Standards - (Replaced by Series 21 - see above list of Rules).
- No. 14 - Criteria for State Colleges to Offer Graduate Degrees.
- No. 15 - Criteria for Designation of University Status.

## WEST VIRGINIA COUNCIL FOR COMMUNITY & TECHNICAL COLLEGE EDUCATION

### Rules Filed for a 30-Day Comment Period

No rules are currently available for comment.

#### Rules and Policies

- Series 1:** Perkins Formula. Procedural Rule - Final - Effective July 1, 2003.
- Series 2:** Finance. Legislative Rule - Final - Effective April 20, 2009.
- Series 3:** Conversion of Non-Credit Training Activities to College-Level Credit. Procedural Rule - Final - Effective February 28, 2008.
- Series 4:** Rules, Guidelines and Other Policy Statements by Governing Boards. Procedural Rule - Final - Effective May 5, 2013.
- Series 5:** Employing and Evaluating Presidents. Legislative Rule - Final - Effective April 20, 2009.
- Series 6:** Performance Indicators. Legislative Rule - Final - Effective April 20, 2009.
- Series 7:** Technical Program Development and West Virginia Advance Rapid Response Workforce Development. Procedural Rule-Final-Effective February 23, 2012.
- Series 8:** Personnel Administration. Procedural Rule - Final - effective October 22, 2001.
- Series 9:** Academic Freedom, Professional Responsibility, Promotion and Tenure. Procedural - Final - Effective December 23, 2008.
- Series 10:** Policy Regarding Program Review. Procedural Rule - Final - Effective September 30, 2005.
- Series 11:** Degree Designation, General Education Requirements, New Program Approval, and Discontinunance of Existing Programs. Procedural Rule - Final - Effective July 15, 2011.
- Series 12:** Capital Project Management. Procedural Rule - Final - Effective December 25, 2001.
- Series 13:** Change in Organization of Colleges and Schools. Procedural Rule - Final - Effective September 30, 2005.
- Series 14:** Holidays. Procedural Rule - Final - Effective September 30, 2005.
- Series 15:** Acceptance of Advanced Placement Credit. Legislative Rule - Final - Effective December 14, 2005.
- Series 16:** College Level Examination Program. Procedural Rule - Final - Effective September 30, 2005.
- Series 17:** Transferability of Credits and Grades at West Virginia Public Colleges and Universities. Procedural Rule - Final - Effective January 29, 2010. Core Coursework

Transfer Agreement 2006-07.

- Series 18:** Assignment of Academic Credit and Financing Noncredit Instruction. Procedural Rule - Final - Effective January 12, 2006.
- Series 19:** Guidelines for College Courses for High School Students. Procedural Rule - Final - Effective May 22, 2010.
- Series 20:** Authorization of Degree Granting Institutions. Procedural Rule - Final - Effective August 10, 2002. PROPOSED REVISION Series 20: Initial Authorization of Degree-Granting Institutions. Legislative Rule - Awaiting Legislative Approval.
- Series 21:** Freshman Assessment and Placement Standards. Procedural Rule - Final - Effective October 29, 2010.
- Series 22:** Grade Point Average for Associate and Baccalaureate Degree Students. Procedural Rule - Final - Effective January 12, 2006.
- Series 23:** Standards and Procedures for Undergraduate Admissions at Community and Technical Colleges. Procedural Rule - Final - Effective May 22, 2011.
- Series 24:** Preparation of Students for College. Procedural Rule - Final - Effective August 10, 2002.
- Series 25:** Residency Classification for Determining Tuition and Fees. Procedural Rule - Final - Effective September 30, 2005.
- Series 26:** Council Organization and Meetings. Procedural Rule - Final - Effective January 10, 2005.
- Series 27:** Workforce Development Initiative Program. Legislative Rule - Final Effective June 21, 2012.
- Series 28:** Guidelines for Granting College Credit for Courses Under the West Virginia EDGE, "Earn a Degree, Graduate Early" Program. Procedural Rule - Final - Effective July 15, 2011.
- Series 29:** Travel. Procedural Rule - Final - Effective September 30, 2005.
- Series 30:** Purchasing. Procedural Rule - Final - Effective January 21, 2005.
- Series 31:** Ethics. Procedural Rule - Final - Effective September 30, 2005.
- Series 32:** Tuition and Fees. Legislative Rule - Final Effective June 21, 2012.
- Series 33:** Tech Scholars Scholarship Program. Procedural Rule - Final - Effective September 21, 2012.
- Series 35:** Correspondence, Business, Occupational, and Trade Schools. Legislative Rule - Final Effective August 24, 2011.
- Series 36:** Sports Programs at Community and Technical Colleges. Procedural Rule - Final - Effective September 30, 2005.
- Series 37:** Increased Flexibility for Community and Technical

- Colleges. Procedural Rule - Final - Effective December 14, 2005.
- Series 38:** Employee Leave. Procedural Rule - Final - Effective December 14, 2005.
- Series 39:** Classified Employees. Procedural Rule - Final - Effective December 14, 2005.
- Series 40:** Equal Opportunity and Affirmative Action. Procedural Rule - Final - Effective December 14, 2005.
- Series 41:** Community and Technical College Developmental Education Competencies. Procedural Rule - Final - Effective May 5, 2013.
- Series 43:** Purchasing Efficiencies. Legislative Rule - Final - Effective April 6, 2004.
- Series 44:** Policy Regarding Action to be Taken on Audit Reports. Procedural Rule - Final - Effective September 30, 2005.
- Series 45:** Community and Technical College Faculty Instructional Load. Procedural Rule - Final - Effective September 30, 2005.
- Series 49:** Accountability System. Legislative Rule - Final - Effective April 20, 2009.
- Series 51:** Bookstores and Text books. Legislative Rule - Final - Effective May 22, 2010.
- Series 52:** Annual Reauthorization of Degree-Granting Institutions. Legislative Rule - Awaiting Legislative Approval.
- Series 53:** Human Resource Administration. Emergency Legislative Rule - Effective February 19, 2013.

**OUTLINE FOR RULE-MAKING WORKSHOP**  
**JULY 26, 2013**

- What is a rule?
  - Under the law, a rule is any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has agency-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any of these that meets this definition is a rule.
  - It is the nature of bureaucracies to oppose laws such as the Open Governmental Proceedings Act (Open Meetings Law), the Administrative Procedures Act (APA), and the Freedom of Information Act (FOIA). Open governmental meetings have been required in WV only since 1975, seven years before the Administrative Procedures Act was passed and 13 years before the APA was applied to education. FOIA came much later, in 1986.
  
- Why require rules and why have separate governmental review?
  - The purpose of rule-making review is to improve public access to agency decision-making and to increase awareness and transparency of the rules of agencies, often called the "headless fourth branch of government".
  - Part-time legislators frequently deal with areas in which they have little expertise. In such cases, details are delegated to the agencies to flesh out the legislative mandate.
  
- What agencies are required to submit their rules for review and approval?
  - All levels of government now require some form of rule-making review:
    - Federal government
      - The federal Administrative Procedure Act (APA), enacted June 11, 1946, governs the way in which federal administrative agencies may propose and establish regulations.
    - All state governments
      - West Virginia has been a "rules" state since the passage of the State APA in 1982, requiring that state agencies conduct business within full view of the public and according to rules promulgated under a delegation of authority from the Legislature. Education was not subject to rule-making review until LOCEA was created in 1988.

- Many local governments
- State administrative procedures.
  - There are vast differences among states in how they frame and implement their APAs. For example, Florida law provides: "A grant of rule-making authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required."
  - By contrast, West Virginia's APA specifically recognizes agency authority to do whatever is "necessary or expedient to accomplish the purposes of legislation."
- Which WV state agencies must file rules?
  - All WV agencies except those granted exceptions by law. The exceptions are
    - WV Board of Parole,
    - Public Service Commission,
    - Board of Public Works when meeting as a board,
    - The Secondary Schools Activity Commission
    - Also exempt are:
      - Rules governing the conduct of inmates and other incarcerated or institutionalized persons;
      - Open seasons of wildlife (hunting and fishing regulations);
      - Conduct of persons in military service;
      - Rules governing receipt of public assistance; and
      - Rules promulgated by the governing boards of the state colleges and universities. These are covered by a different statute.
- What kinds of rules exist?
  - Divided by level:
    - Federal agency regulations;
    - State agency rules or regulations. WV has only "rules" no "regulations".
    - Local agency rules or regulations;
      - Institutional boards of governors;
      - County boards of education; and
      - Other county agencies.
  - Divided by type:
    - Legislative rules;
    - Procedural rules;
    - Interpretive rules; and
    - Emergency legislative rules.
- What are the differences among the four types of rules?
  - A **legislative rule** is any rule which (1) has the force of



law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. If the rule affects private rights, privileges or interests, it is a legislative rule.

- A **procedural rule** sets forth procedures, practices or rules of evidence for proceedings before an agency, including forms prescribed by the agency. These rules determine how an agency carries on its business with its clients and/or the general public.
  - An **interpretive rule** is one adopted by an agency independently of any delegation of legislative power and is intended to provide information or guidance to the public. An interpretive rule may not be relied upon to impose a civil or criminal sanction (penalty), to regulate private conduct or the exercise of private rights or privileges, nor to confer any right or privilege provided by law.
  - An **emergency rule** by definition must be a legislative rule. An emergency rule may be filed only when a true emergency exists that justifies the promulgation of the rule or when a bill is passed directing the agency to file an emergency rule.
- All higher education rule-making in WV is governed by **§18B-1-6**.
    - Who is covered by this Code section?
      - HEPC
      - Council
      - Institutional BOGs
    - The HEPC and the Council fall under both §18B-1-6 and §29A-3A-1 et seq. Rules of the State Board of Education are constitutionally protected. They fall under §29A-3B-1 et seq., but are not subject to legislative approval.
    - Rules for the HEPC initially (SB 653, 2000) were proposed by the chancellor and required the approval of the Secretary of Education and the Arts.
    - The Council was created in 2001 to advise the HEPC on matters relating to CTCs, but had no independent powers, thus no rule-making authority, until 2004 (SB 448).
  - What difference does all this make to you?
    - Can you name one issue of consequence that has come up on your campus which does not fall under the definition of a rule? Why do you believe it is not covered?
    - Examples of state-level rule-making:
      - The HEPC and Council each has 52 rules filed with the Secretary of State. Thirteen of these are legislative rules which have the force of law.

(See handouts.)

- SB 330 (2011) contains requirements relating to at least 27 new or restated rules.
- Since 1988, when LOCEA was created and education was placed under state rule-making requirements, there have been rules adopted on travel expenses and vehicle usage; establishing benchmarks and indicators for community and technical colleges, baccalaureates, and universities; measuring institutional progress toward meeting the benchmarks; providing services to students with disabilities; developing procedures for the HEPC, Council, and BOGs to conduct business; guiding the rule-making of the BOGs; preparing the annual higher education report cards; collecting, disseminating, and sharing data; granting additional years of experience to classified employees; controlling facilities usage and deferred maintenance; separating component CTCs; establishing new BOGs; consolidating or merging institutions; granting and/or withdrawing greater flexibility to certain institutions, to name a few!

**INDEPENDENT RESEARCH REPORTS RELATED TO  
COMMUNITY COLLEGE EDUCATION:**

(1) ***A Plan for Comprehensive Community College Education in West Virginia, (1971)***. Conducted in response to HCR 16, recommended that West Virginia develop community colleges as discrete elements of baccalaureate institutions and recommended creating Parkersburg Community College as free-standing state institution of higher education.

(2) ***Building for a New Century, (1989)***. Conducted by Carnegie Foundation made two major recommendations regarding community college education:

- Build a network of community colleges to increase higher education access and stimulate economic renewal in every section of the state; and
- "We conclude that West Virginia's Community College structure must be overhauled. For that reason, we recommend that all community colleges become freestanding institutions."

(3) ***The Report of the Study Committee on Higher Education, (2000)***. Conducted by National Center for Higher Education Management Systems (NCHEMS) mandated by HB 3019 (1999 RS) recommended that, over a six year period, West Virginia move away from "component" community colleges to a statewide network of independently-accredited community and technical colleges serving every region of the State."

(4) ***The Report to the Legislative Oversight Commission on Education Accountability (2001)***, the McClenney Report, required by SB 653 and conducted by Dr. Kay McClenney (ECS). Her research identified a number of problems with delivery of community and technical education in WV and found that "the community and technical colleges will not be able to operate optimally until they move out of the shadow of their 'parent' institutions, with the flexibility and autonomy to establish a uniquely community college identity, culture, program mix, outreach capacity and approach to teaching and learning."

(5) ***West Virginia: A Vision Shared! Economic Development: A Plan for West Virginia's Future, (2001)*** cited as the ***Market Street Report***, commissioned by the West Virginia Council for Community and Economic Development to assess the economic competitiveness of the state. "The state needs to establish a strong technical education system that is separate from the university system and is responsive to the needs of business throughout the state."

(6) ***Taking Career and Technical Education to the Next Level***

*in West Virginia*, (2007) a study mandated by **SCR 42 (2006)** makes a number of recommendations relevant to community and technical education. The first is to "Reiterate the Legislature's commitment to SB 653 and maintain the community and technical colleges' independent accreditation and the comprehensive community and technical college mission."

## **CHAPTER 6C. PUBLIC EMPLOYEES.**

### **ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.**

#### **§6C-2-1. Purpose.**

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective and consistent manner will maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter eighteen or eighteen-a of this code. Parties to grievances shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

(d) Effective the first day of July, two thousand seven, any reference in this code to the education grievance procedure, the state grievance procedure, article twenty-nine, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.

#### **§6C-2-2. Definitions.**

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) "Discrimination" means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e) (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the Superintendent of the State Police. "Employee" does not mean an employee of a constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous

treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) "Grievance" does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.

(j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession.

(m) "Party", or the plural, means the grievant, intervenor, employer and the Director of the Division of Personnel or his or her designee, for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees.

(n) "Representative" means any employee organization, fellow employee, attorney or other person designated by the grievant or intervenor as his or her representative and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

### **§6C-2-3. Grievance procedure generally.**

(a) *Time limits.* –

(1) An employee shall file a grievance within the time limits specified in this article.

(2) The specified time limits may be extended to a date certain by mutual written agreement and shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause for which the grievant has approved leave from employment.

(b) *Default.* –

(1) The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within ten days of the default, the grievant may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may, within five days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of

stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. In making a determination regarding the remedy, the administrative law judge shall determine whether the remedy is proper, available and not contrary to law.

(3) If the administrative law judge finds that the employer has a defense to the default as permitted by subdivision (1) of this subsection or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

(c) *Defenses and limitations.* –

(1) *Untimeliness.* – Any assertion that the filing of the grievance at level one was untimely shall be made at or before level two.

(2) *Back pay.* – When it is a proper remedy, back pay may only be granted for one year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, in which case an eighteen-month limitation on back pay applies.

(3) *Statutory defense.* – If a party intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.

(d) *Withdrawal and reinstatement of grievance.* – An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) *Consolidation and groups of similarly situated employees.* –

(1) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the chief administrator or administrative law judge.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

(f) *Intervention.* – Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) *Representation and disciplinary action.* –

(1) An employee may designate a representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) *Reprisal.* – No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.

(i) *Improper classification.* – A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(j) *Forms.* – The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations and all other necessary documents and provide them to chief administrators to make available to any employee upon request.

(k) *Discovery.* – The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) *Notice.* – Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(m) *Record.* – Conferences are not required to be recorded, but all documents admitted and the decision, agreement or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

(n) *Grievance decisions and reports.* –

(1) Any party may propose findings of fact and conclusions of law within twenty days of an arbitration or a level three hearing.

(2) A decision, agreement or report shall be dated, in writing, setting forth the reasons for the decision or outcome and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) *Scheduling.* – All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the administrative law judge.

(p) *Attendance and preparation.* –

(1) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(2) In addition to actual time spent attending grievance proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(3) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the administrative law judge.

(q) *Grievance files.* –

(1) All grievance forms decisions, agreements and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one year following the conclusion of the grievance.

(r) *Number of grievances.* – The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(s) *Procedures and rules.* – The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the State Administrative Procedures Act under chapter twenty-nine-a of this code for all proceedings relating to



the grievance procedure.

**§6C-2-4. Grievance procedural levels.**

**(a) Level one: Chief administrator. –**

(1) Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees shall further file a copy of the grievance with the Director of the Division of Personnel.

(2) *Conference.* – The chief administrator shall hold a conference within ten days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within fifteen days of the conference.

(3) *Level one hearing.* – The chief administrator shall hold a level one hearing within fifteen days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within fifteen days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

**(b) Level two: Alternative dispute resolution. –**

(1) Within ten days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or private arbitration.

(2) *Mediation.* – The board shall schedule the mediation between the parties within twenty days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

(3) *Private mediation.* – The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within twenty days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

(4) *Private arbitration.* – The parties may agree, in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule the arbitration within twenty days of the written request and shall follow standard arbitration practices and any applicable board procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within thirty days following the arbitration. An arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator shall inform the board, in writing, of the decision within ten days.

**(c) Level three hearing. –**

(1) Within ten days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal

with the employer and the board requesting a level three hearing on the grievance. State government employees shall further file a copy of the grievance with the Director of the Division of Personnel .

(2) The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process .

(3) The administrative law judge shall schedule the level three hearing and any other proceedings or deadlines within a reasonable time in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge.

(4) The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths and exercise other powers granted by rule or law .

(5) Within thirty days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

(6) The administrative law judge may make a determination of bad faith and, in extreme instances, allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

#### **§6C-2-5. Enforcement and appeal.**

(a) The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.

(b) A party may appeal the decision of the administrative law judge on the grounds that the decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the administrative law judge's statutory authority;

(3) Is the result of fraud or deceit;

(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) A party shall file the appeal in the circuit court of Kanawha County within thirty days of receipt of the administrative law judge's decision. The decision of the administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon a separate motion for a stay.

(d) The court shall review the entire record that was before the administrative law judge, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the administrative law judge, or may remand the grievance to the administrative law judge or the chief administrator for further proceedings.

#### **§6C-2-6. Allocation of expenses and attorney's fees.**

(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the circuit court of Kanawha County, or an adverse circuit court decision to the Supreme Court of Appeals of West Virginia, and the grievant substantially prevails upon the appeal, the grievant may recover from the employer court costs and reasonable attorney's fees for the appeal to be set by the court.

#### **§6C-2-7. Mandamus proceeding.**

Any employer failing to comply with the provisions of this article may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney's fees to be set by the court.

## **Appendix B Level One Hearing Guidelines**

When a grievant requests a hearing at level one, this is an evidentiary hearing which must be recorded and transcribed. A record is being made, so it is important to maintain order, and to make sure everything that is said is clearly recorded. The parties may call witnesses and present documents to be placed into evidence.

### **Scheduling the hearing**

By statute, the hearing must be held within 15 working days of the date the grievance was received, and shall be scheduled during regular work hours, in a convenient location, accessible to all parties. The parties may agree to schedule the hearing at any time or place. The chief administrator may ask the parties for dates they are available for hearing, but there is no requirement that this be done, and due to the time constraints, this may not be practical.

**Continuances:** If either party is not available on the date the hearing is scheduled, the party may request that the hearing be continued to a different date. The chief administrator may continue the hearing for good cause, without the agreement of the other party, and reschedule the hearing to a different date without delay. If a party or his or her representative cannot be present on the date selected, and the hearing must be scheduled beyond the 15-day time limit, the parties may agree, in writing, to hold the hearing beyond the statutory timeframes. Always document any continuances or rescheduling of hearings and the reasons for them.

**Notice:** Notice of the hearing shall be sent to the parties at least five days prior to the hearing. The notice must include the date, time, and place of the hearing.

**Representation:** By statute, West Virginia Code § 6C-2-3(g), a party is entitled to have a representative present at any step of the grievance process, including the level one hearing, so the representative's schedule must also be taken into account when scheduling the hearing.

### **Issues which may arise before the hearing**

Grievances may be consolidated by agreement of the parties, or at the discretion of the chief administrator, when the grievances involve similar issues.

Any employee may ask before the hearing, or at the beginning of the hearing, to intervene and become a party to the grievance. The employee asking to intervene must demonstrate that the decision on the grievance may substantially and adversely affect his rights or property, and that his interest is not adequately represented by the existing parties. It is within the chief administrator's discretion whether to allow the employee to

intervene.

**Witnesses:** By statute, West Virginia Code § 6C-2-4(a)(3), all parties have the right to present and cross-examine witnesses at a level one hearing. However, the chief administrator does have the right to reasonably limit the evidence to relevant matters and take measures to limit redundant or repetitive evidence.

### **Conducting the hearing**

The chief administrator should utilize a sign-in sheet at the hearing for all parties and witnesses. Each name should be printed to ensure that a legible record is made of those in attendance.

**Recording:** The chief administrator will begin the hearing by turning on the recording equipment, or instructing the court reporter that they will be “on the record.” It is a good idea to do a test to make sure the recording equipment is working properly. The recording *must* be of good quality to be transcribed, so all witnesses and parties must speak clearly and loudly enough to be recorded.

At all times during the hearing, the chief administrator should make it clear that only one person is to speak at a time, so that everything that is said on the record is properly recorded. If two or more individuals are speaking at the same time during the hearing, the chief administrator should instruct the parties to cease this behavior.

**Introduction:** The chief administrator should begin the hearing by introducing himself, stating the case name and docket number, and the date and time. Each party should be asked to identify himself also. The chief administrator should state which party has the burden of proof. Pursuant to the Board’s Procedural Rules, Section 3, the employer only has the burden of proof in a disciplinary case.

**Preliminary and Procedural issues:** If any issues need clarification, this should be addressed before any evidence is taken. Discussions may be held “off the record” (not recorded and not part of the record), to facilitate the process, and to address procedural issues which the chief administrator believes can be more easily clarified off the record; however, any matters which were decided during an off the record discussion must be restated on the record.

**Opening Statements:** The chief administrator should allow each party to make a brief opening statement to identify the issues and arguments, if they wish to do so. The party with the burden of proof should give his opening statement first, and also present his witnesses first.

**Swearing witnesses:** An oath must be administered by the chief administrator to

each witness. The witness should raise his right hand and agree to an oath such as the following: "Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?" Each witness must identify himself on the record, and should be asked to identify his position and place of employment.

**Questioning witnesses:** Only one person for each party should be allowed to ask questions of each witness (no tag-teaming a single witness). When the party presenting a witness has finished with his questions, the other party must be given the opportunity to cross-examine the witness about his testimony. The party presenting the witness should be allowed to ask follow-up questions of the witness after cross-examination. It is within the chief administrator's discretion whether to allow additional questioning, so long as each party is given a full and fair opportunity to elicit information from the witness which is relevant to the issues. Any party may object to any question asked of a witness. The chief administrator may listen to the argument of the parties regarding the objection before making a ruling on whether the question will be allowed, and may limit the argument of the parties to ensure an orderly administration of the hearing and to complete the hearing.

Witnesses should be instructed to answer questions by saying "yes" or "no," rather than "uh huh." Witnesses should be instructed to wait until the person asking the question has completed the question before they answer. The chief administrator may interrupt the questioning to make sure the witness' response is clear when a witness has not complied with these instructions.

\* **Disciplinary cases:** A grievant *cannot* be required to testify in a disciplinary hearing, including cases involving termination of employment, suspensions, and reprimands.

**Documents:** Each document offered as evidence must be marked as an Exhibit, using sequential numbers or letters, and reflecting which party offered the document into evidence. For example, Respondent's level one exhibit 1, 2, 3, and so on, or Grievant's level one exhibit 1, 2, 3, and so on. The chief administrator must ask if there is any objection to the admission of the document into the record, and the opposing party may state his objection to the admission of the exhibit into evidence. If there is an objection, the chief administrator must make a ruling on whether the document will be admitted into evidence. The chief administrator must state on the record whether each document has been admitted into the record. Documents which are not admitted into evidence should be given an exhibit number, and the chief administrator must write on the face of the document that it has not been admitted. The document should remain in the grievance file for appeal.

**Closing arguments:** The chief administrator may allow each party to make a closing statement at the end of the hearing, or submit written proposed findings of fact and conclusions of law. However, if the parties wish to submit written argument, the chief administrator needs to determine whether this is feasible given the statutory time lines.

The parties may agree to waive the statutory time lines for issuance of the decision. Such waivers should be reduced to writing, stating a specific date for the submission of written proposals, and a specific date for the issuance of the Decision.

If the hearing cannot be completed on the scheduled date, it is within the discretion of the chief administrator to set another day of hearing as quickly as possible.

### **After the hearing**

The chief administrator must issue a written decision within 15 working days of the level one hearing, transmitting it to the grievant within this time period. The decision must state the reasons for the decision, whether the grievance is granted or denied, and the address and procedure to appeal to the next level.

The chief administrator must complete the "Cost Report" at the conclusion of the hearing, and submit it with the written decision to the West Virginia Public Employees Grievance Board.

A copy of the recording of the hearing must be provided to any party upon request.

## AUTHORITY OVER HIGHER ED PERSONNEL

Since the time the Higher Education Policy Commission became a functioning state-wide board in 2001 (SB 653 & SB 703), the Legislature has followed a consistent policy regarding personnel administration within the public higher education systems:

- The broad goals and objectives of personnel administration are established in statute.
- Within the statutory framework, the state-wide boards are responsible to "establish, control, supervise and manage a complete, uniform system of personnel classification".
- The institutional boards of governors are responsible to administer the system under the rules promulgated by the Commission and Council.

The legislative purpose is stated first in SB 703 (2001): *"The purpose of the Legislature in the enactment of this article is to require the commission to establish, control, supervise and manage a complete, uniform system of personnel classification ... for all employees other than faculty and nonclassified employees at state institutions of higher education."* This purpose was reaffirmed in SB 448 (2004). In SB 330 the purpose was restated as follows: *"The intent of the Legislature in enacting this article and articles eight, nine and nine-a of this chapter is to establish a state-wide, integrated human resources structure...."*

From 2001, when the responsibilities of the Interim Governing Board were passed to the Commission, this body has been charged with the responsibility to *"promulgate rules as necessary ... for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;..."* When the Community and Technical College Council became independent in 2004 (SB 448), it was included in the charge: *"The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;..."* and the legislative purpose for enacting the statute was broadened to include the Council: *"The purpose of the Legislature in the enactment of this article is to require the commission and council jointly to establish, control, supervise and manage a complete, uniform system of personnel classification ...."* The state level responsibility for establishing, controlling, supervising and managing personnel administration was reaffirmed specifically in SB 703 (2005) and HB 3215 (2008) as well as in SB 330.

The provisions cited, taken from statutes enacted over a

period of eleven years, clearly show the legislative intent to establish a logical process to be followed in higher education personnel administration:

- First, the Commission and Council are charged to "design, develop, implement and administer the personnel system of classification and compensation" (§18B-9A-7);
- Second, they are given authority to promulgate rules to implement the system they design (§18B-1-6); and
- Third, the institutional boards of governors are charged to administer the system under the rules promulgated by the Commission and Council.

Specifically, the boards of governors are to administer the personnel system for employees at the institutions under their jurisdiction "subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council,... (§18B-2A-4), (SB 448, 2004). This charge to the institutional boards is reaffirmed in SB 703 (2005), HB 3215 (2008), HB 4026 (2010) and SB 330. The charge contained in SB 330 is clarified further and the limitations on board discretion are stated expressly as follows: "The governing boards of all state institutions of higher education are subject to the provisions of law that relate to the administration of personnel matters including, specifically, articles seven, eight, nine and nine-a of this chapter (§18B) and to rules promulgated and adopted [by the Commission and Council] in accordance with these provisions." This bill further states that "The primary responsibility for implementation ... [of SB 330] rests with the commission and the council who shall provide leadership and assistance to the human resources professionals within each organization ....

As the citations above and below demonstrate, the boards of governors never have been authorized to exercise control over personnel administration apart from state and federal law and rules duly promulgated by the state-wide board under whose jurisdiction they fall. SB 330 did not change these relationships nor did it alter the pattern established in legislation at the time the Commission, the Council, and the boards of governors were created.

#### **SB 703 (2001)**

**§18B-1B-4. Powers and duties of higher education policy commission.**  
§18-1b-4(a)(40) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission may promulgate a new uniform rule for the purpose of standardizing, as much as possible,



the administration of personnel matters among the institutions of higher education;...

**§18B-2A-4. Powers and duties of governing boards generally.**

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation, and discipline for employees of the institutions under their jurisdiction;...

**§18B-9-1. Legislative purpose.**

The purpose of the Legislature in the enactment of this article is to require the commission to establish, control, supervise and manage a complete, uniform system of personnel classification in accordance with the provisions of this article for all employees other than faculty and nonclassified employees at state institutions of higher education.

**SB 448 (2004)**

**§18B-1B-4. Powers and duties of higher education policy commission.**

§18B-1B-4(a)(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;...

**§18B-2A-4. Powers and duties of governing boards generally.**

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;...

**§18B-2B-6. Powers and duties of the council.**

(b)(62) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The council and commission shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel

matters among the institutions of higher education;...

**§18B-9-1. Legislative purpose.**

The purpose of the Legislature in the enactment of this article is to require the commission and council jointly to establish, control, supervise and manage a complete, uniform system of personnel classification in accordance with the provisions of this article for all employees other than faculty and nonclassified employees at state institutions of higher education.

**SB 603 (2005)**

(a)(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The Commission and the Council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;... (Also in HB 4026 in 2010).

**§18B-2A-4. Powers and duties of governing boards generally.**

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the Commission and the Council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;... (Also in HB 4026 in 2010).

**HB 3215 (2008)**

**§18B-2A-4. Powers and duties of governing boards generally.**

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the Commission and the Council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institution under its jurisdiction;...

**§18B-2B-6. Powers and duties of the Council.**

(b) The Council shall propose rules pursuant to section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and applicable provisions of article one-d of this chapter:...

(c)(60) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the Commission for

the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;... (Also in HB 4026 in 2010).

**SB 330 (2011)**

**§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

(a) (33) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;

(b) ...the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:..

(8) Developing, establishing and implementing information, assessment, accountability and personnel systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;...

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, personnel administration, planning, policy analysis, program review and approval, budgeting and information and accountability systems;...

**§18B-2A-3. Supervision of governing boards; promulgation of rules.**

(b) The governing boards of all state institutions of higher education are subject to the provisions of law that relate to the administration of personnel matters including, specifically, articles seven, eight, nine and nine-a of this chapter and to rules promulgated and adopted in accordance with these provisions.

**§18B-2A-4. Powers and duties of governing boards generally.**

(k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, discipline for employees at the institution under its jurisdiction;...

**§18B-4-2a. Employment of vice chancellor for human resources; powers and duties generally; staff; office.**

(c) The Vice Chancellor, in consultation with the chancellors, performs functions, tasks and responsibilities necessary to carry out the policy directives of the council and commission and any other duties prescribed by law. The Vice Chancellor oversees and monitors all issues related to the personnel system for higher education employees and provides technical support to organizations as directed or requested on all issues related to the design, development, implementation and administration of the personnel system established by this chapter and by duly promulgated rules.

**§18B-7-1. Legislative intent and purpose.**

(a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a of this chapter is to establish a state-wide, integrated human resources structure....

**§18B-9A-8. Implementation of classification and compensation system.**

(a) Sweeping cultural changes are needed to implement the recommendations of the Select Committee on Higher Education Personnel and the provisions of this article and articles seven, eight and nine of this code. These kinds of changes require dedication and cooperation from all employee classes across the two systems of public higher education, the commission, council and state policymakers. The primary responsibility for implementation, however, rests with the commission and the council who shall provide leadership and assistance to the human resources professionals within each organization to bring about the changes successfully.