



# **NEW EMPLOYEE AND DIVISION HANDBOOK**

**April 2021**

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**April 2021**

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**West Virginia Higher Education Policy Commission  
Meeting of Month, day, year**

- ITEM:** Title
- INSTITUTION(S):** Name of Institution/s
- RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia Higher Education Policy Commission.....
- STAFF MEMBER:** Name of staff member
- BACKGROUND:**

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March 23, 2021

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**Shenandoah Valley**

## WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE SYSTEM

### Campus Locations

Name of College	Address 1	Address 2	City	State	Zip	County
Blue Ridge Community and Technical College	13650 Harvest Drive		Martinsburg	WV	25403	Berkeley
Blue Ridge Community and Technical College	5550 Winchester Avenue		Martinsburg	WV	25405	Berkeley
Blue Ridge Community and Technical College	109 War Memorial Drive		Berkeley Springs	WV	25411	Morgan
BridgeValley Community and Technical College	2001 Union Carbide Drive		South Charleston	WV	25303	Kanawha
BridgeValley Community and Technical College	619 2nd Avenue		Montgomery	WV	25136	Fayette
Eastern WV Community and Technical College	316 Eastern Drive		Moorefield	WV	26836	Hardy
Eastern WV Community and Technical College	150 Providence Lane		Petersburg	WV	26847	Grant
Mountwest Community and Technical College	One Mountwest Way		Huntington	WV	25701	Cabell
New River Community and Technical College	653 Church Street		Lewisburg	WV	24901	Greenbrier
New River Community and Technical College	1001 Mercer Street		Princeton	WV	24740	Mercer
New River Community and Technical College	6101 Webster Road		Summersville	WV	26651	Nicholas
New River Community and Technical College	280 University Drive		Beaver	WV	25813	Raleigh
Pierpont Community and Technical College	1201 Locust Avenue		Fairmont	WV	26554	Marion
Pierpont Community and Technical College	North Central WV Advanced Technology Center	500 Galliher Drive	Fairmont	WV	26554	Marion
Pierpont Community and Technical College	RC Byrd National Aerospace Education Center	1050 Industrial Road, E	Bridgeport	WV	26330	Harrison
Pierpont Community and Technical College	Gaston Caperton Center	501 W Main Street	Clarksburg	WV	26301	Harrison
Pierpont Community and Technical College	Braxton Co. Center	200 Jerry Burton Drive	Sutton	WV	26601	Braxton
Pierpont Community and Technical College	Lewis Co. Center	P.O. Box 83, 205 Minuteman Drive	Weston	WV	26452	Lewis
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Southern WV Community and Technical College	Boone/Lincoln Campus	2503 Daniel Boone Pkwy	Foster	WV	25081	Boone

Southern WV Community and Technical College	Lincoln Campus	81 Lincoln Panther Way	Hamlin	WV	25523	Lincoln
Southern WV Community and Technical College	Running Right Leadership Academy	431 Running Right Way	Julian	WV	25529	Boone
Southern WV Community and Technical College	Logan Campus	2900 Dempsey Branch Road	Mt. Gay	WV	25637	Logan
Southern WV Community and Technical College	Williamson Campus	1601 Armory Drive	Williamson	WV	25661	Mingo
Southern WV Community and Technical College	Wyoming/McDowell Campus	128 College Drive	Saulsville	WV	25876	Wyoming
Southern WV Community and Technical College	McDowell County Career and Technical Center	One Stadium Drive	Welch	WV	24801	McDowell
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WV Northern Community College	Weirton Campus	150 Park Avenue	Weirton	WV	26062	Hancock
WV Northern Community College	New Martinsville Campus	141 Main Street	Martinsville	WV	26155	Wetzel
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**WV Council for Community and Technical College Education  
Meeting of Month, day, year**

**ITEM:** Title

**INSTITUTION(S):** Name of Institution/s

**RECOMMENDED RESOLUTION:** *Resolved, That the West Virginia Council for  
Community and Technical College  
Education.....*

**STAFF MEMBER:** Name of staff member

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 Human Resources 558-4306  
 Legal/Policy and Planning 558-4820  
 Financial Aid 855-292-1415  
 Policy Commission Office 558-1011  
 WV EPSCoR 558-2321

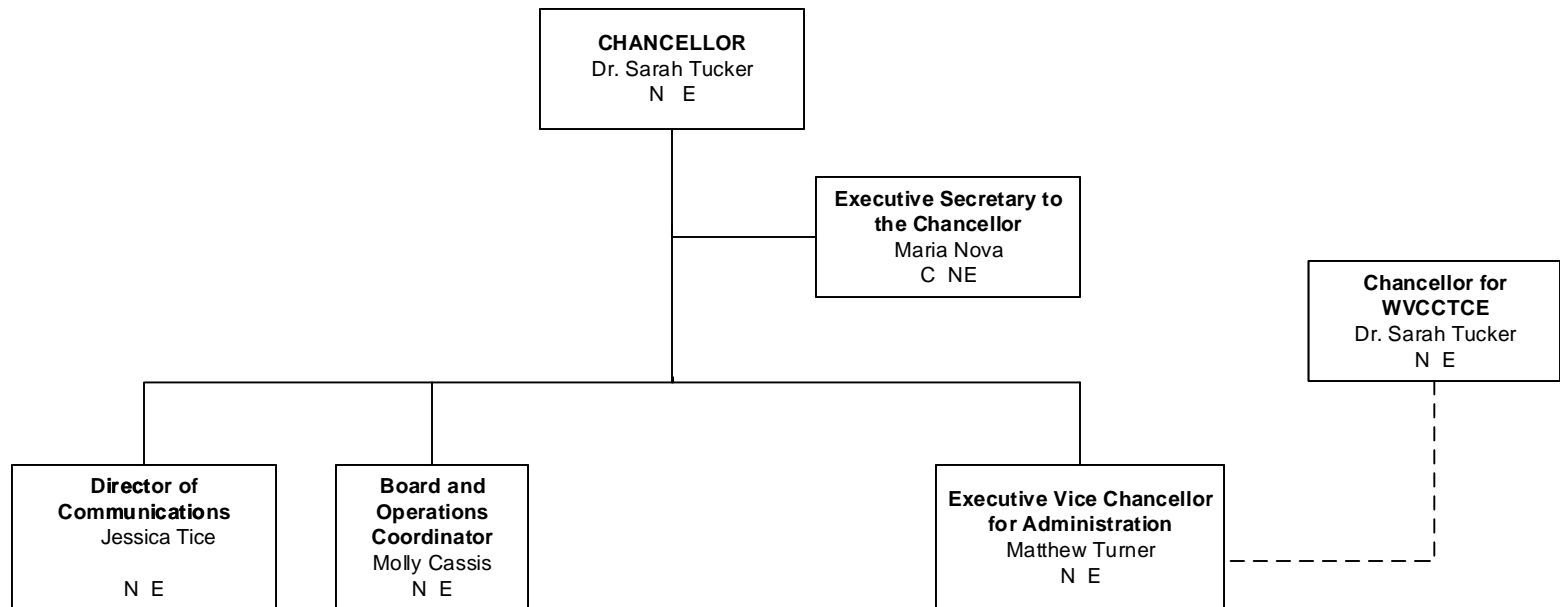
**CONFERENCE ROOMS**

9th Floor Conference Room A Ext. 263  
 9th Floor Conference Room B (President's Room) Ext. 281  
 10th Floor Conference Room Ext. 228

**TOLL FREE NUMBERS**

**PROMISE Scholarship Program**  
**1-877-WVPROMISE**  
**WV Council for Community and Technical College**  
**Education**  
**1-866-TWO-YEAR**  
**West Virginia Higher Education Grant Program**  
**1-888-825-5707**  
**WVNET**  
**1-800-253-1558**

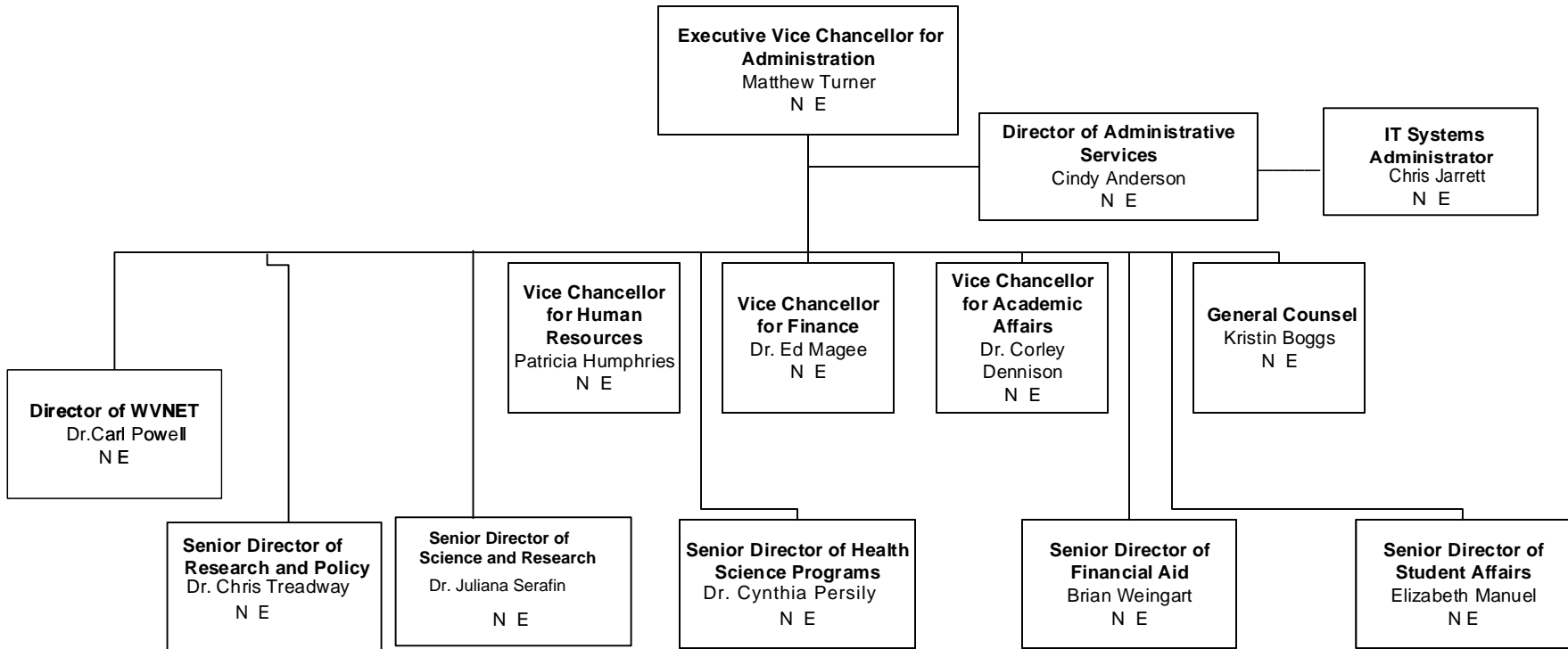
**West Virginia Higher Education Policy Commission**



C – Classified Employees  
N – Non-classified Employees  
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E – Exempt  
NE – Non-exempt



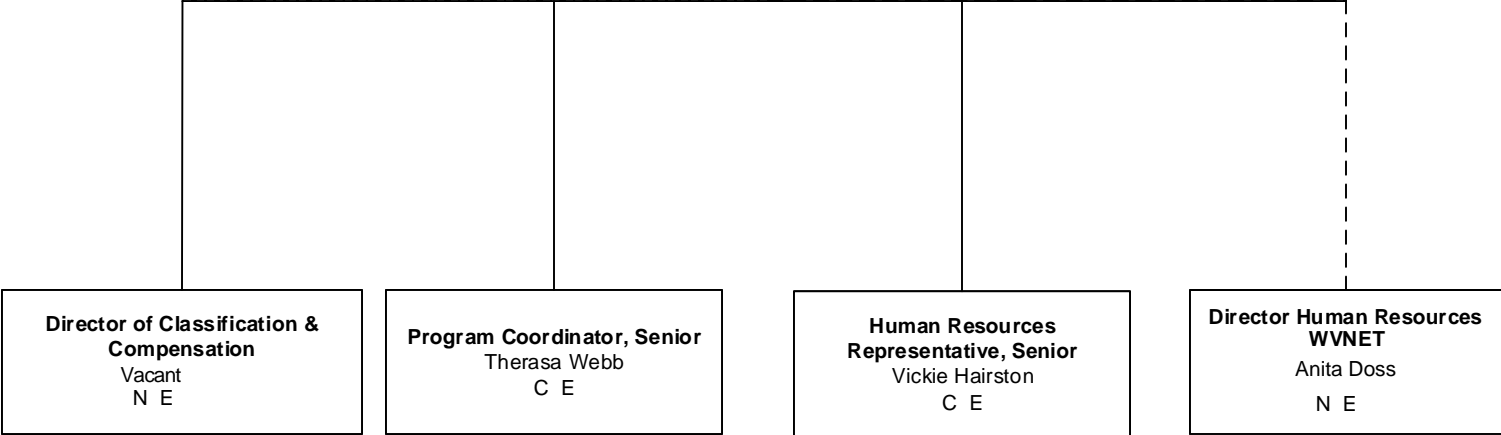
**Administrative Services Division**



C – Classified Employees  
 N – Non-classified Employees  
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 E – Exempt  
 NE – Non-exempt

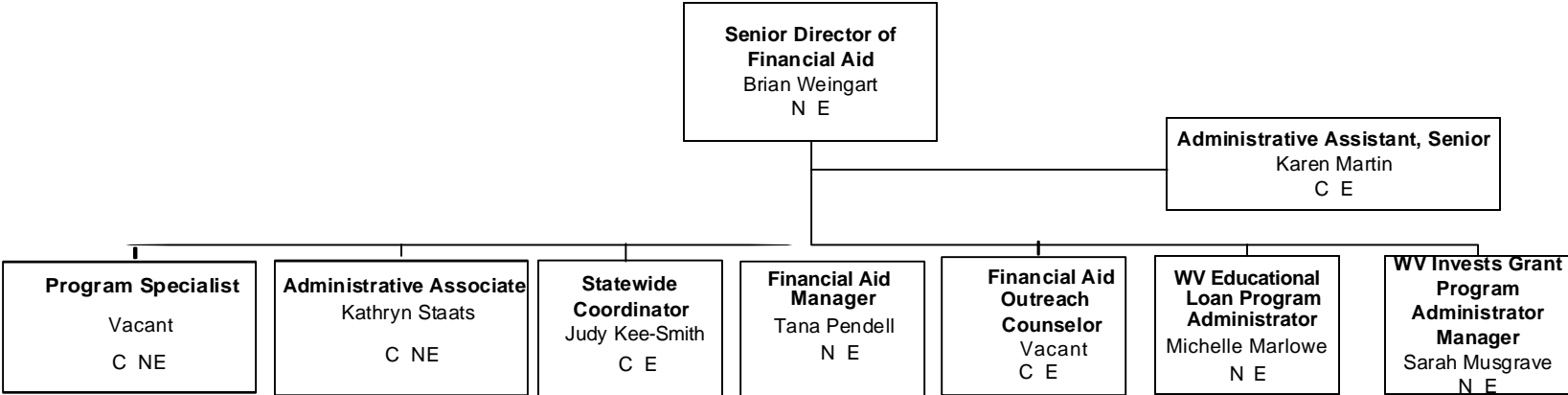
**Division of Human Resources**

**Vice Chancellor for Human Resources**  
Patricia Humphries  
N E



C – Classified Employees  
N – Non-classified Employees  
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E – Exempt  
NE – Non-exempt

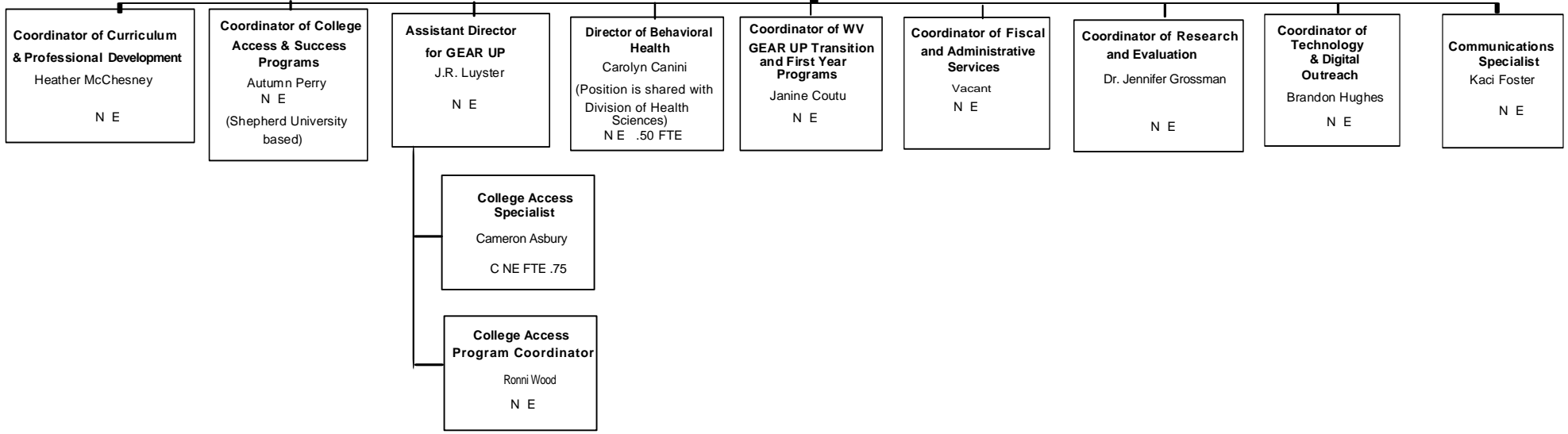
**Division of Financial Aid**



C – Classified Employees  
 N – Non-classified Employees  
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 E – Exempt  
 NE – Non-exempt

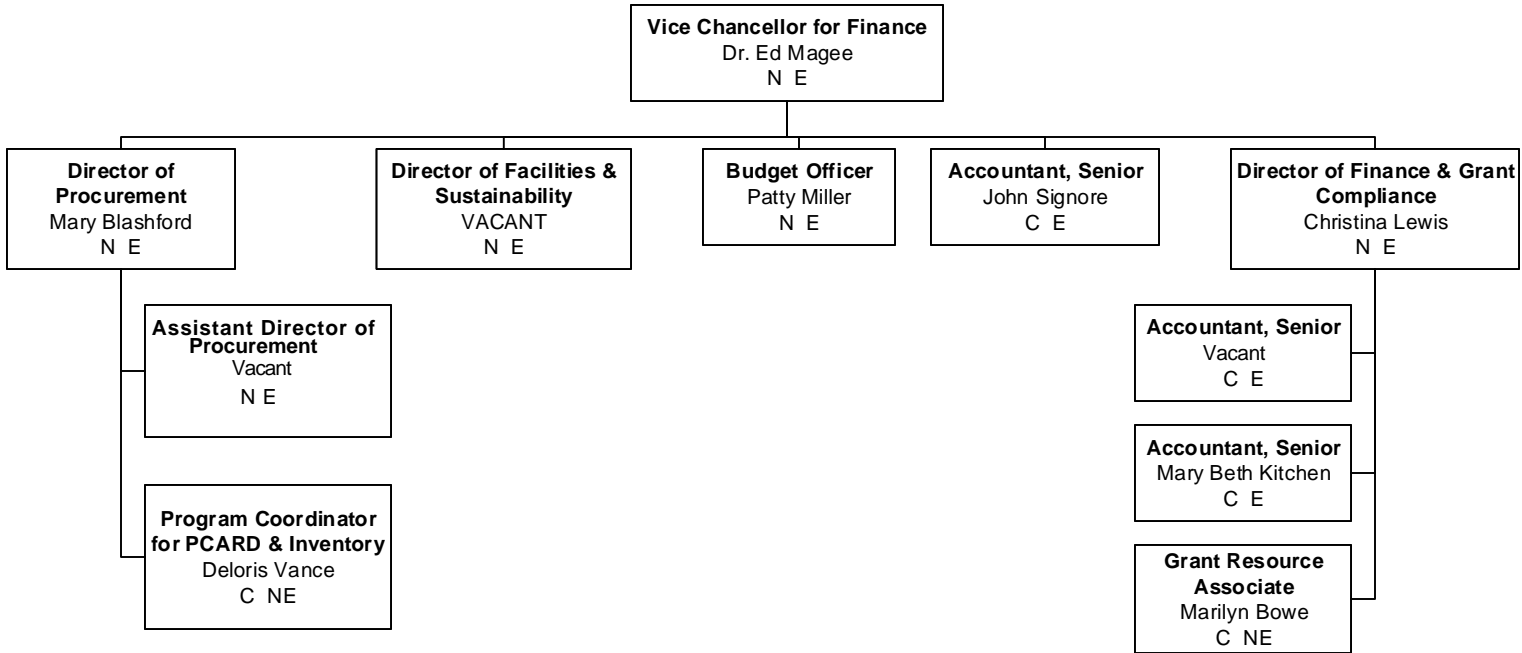
# Division of Student Affairs

**Senior Director of Student Affairs**  
Elizabeth Manuel  
N E

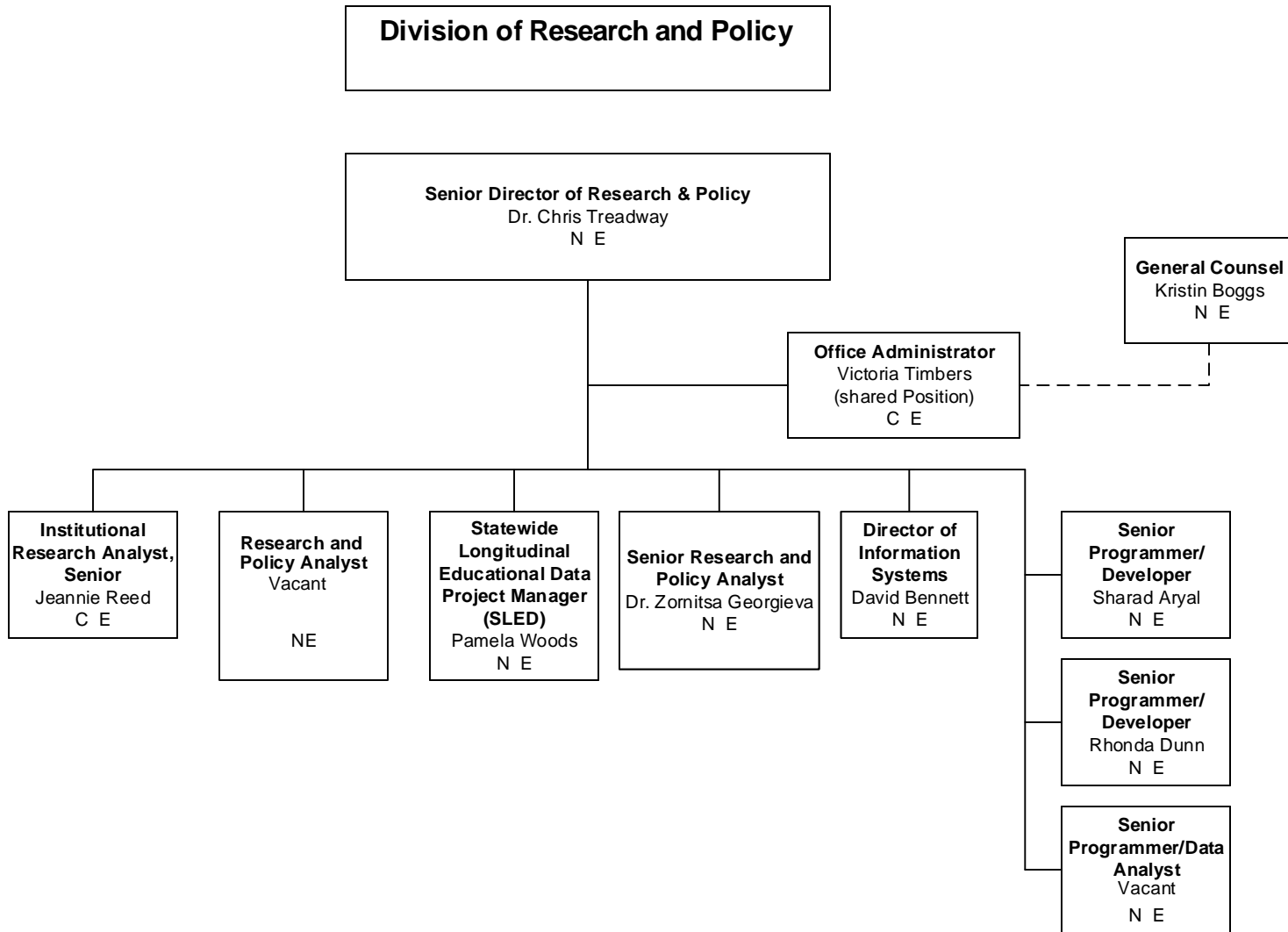


C – Classified Employees  
N – Non-classified Employees  
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E – Exempt  
NE – Non-exempt

**Division of Finance & Facilities**



C – Classified Employees  
 N – Non-classified Employees  
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 E – Exempt  
 NE – Non-exempt

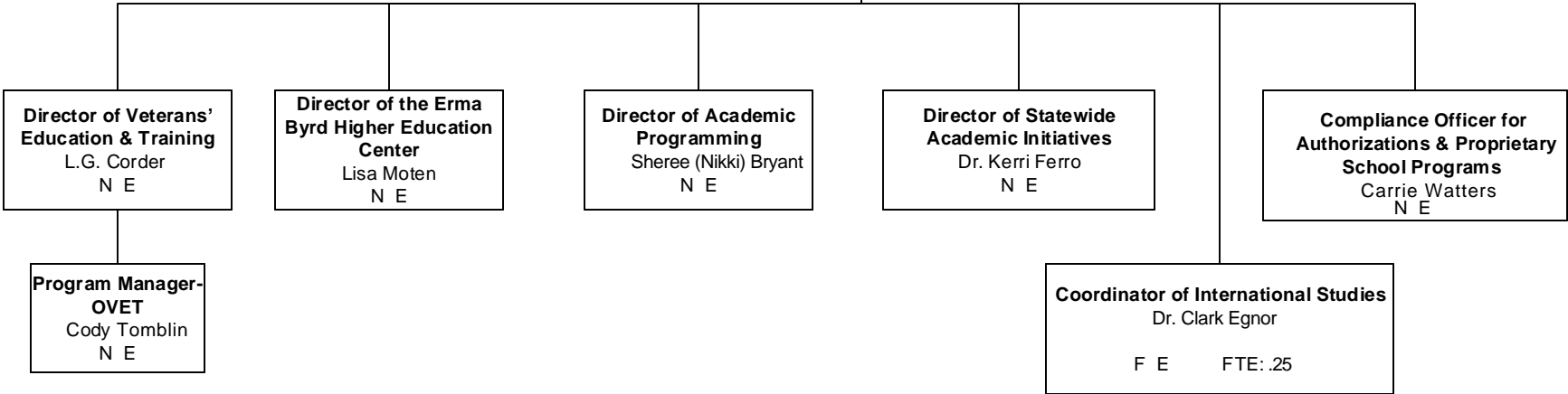


C – Classified Employees  
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 E – Exempt  
 NE – Non-exempt

**Division of Academic Affairs**

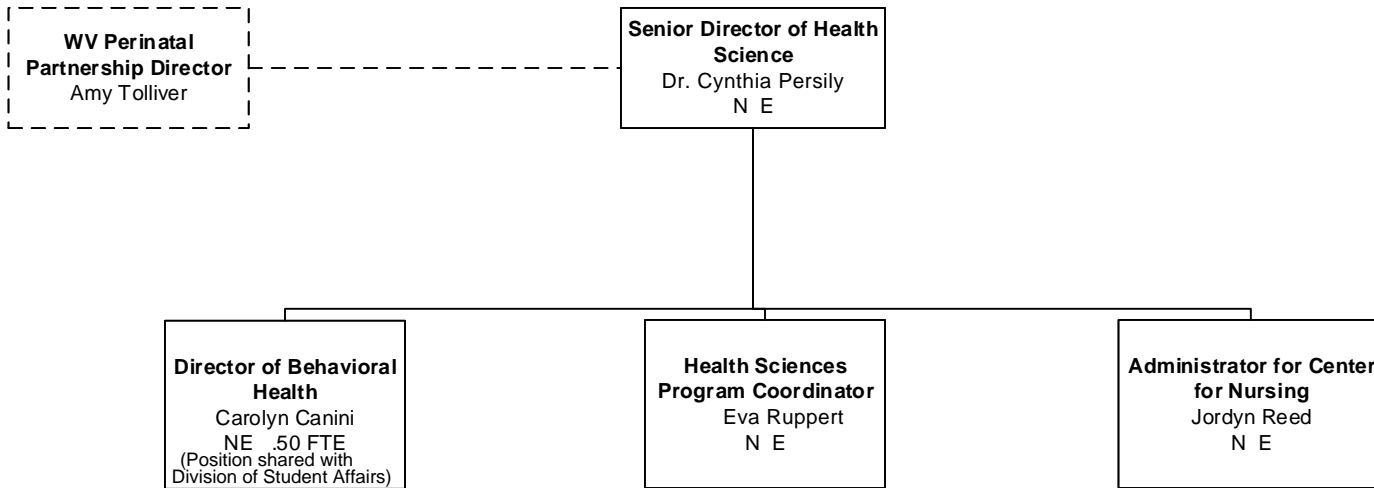
**Vice Chancellor for Academic Affairs**  
 Dr. Corley Dennison  
 N E

**Executive Administrative Assistant**  
 Jelayne Crosier  
 C NE



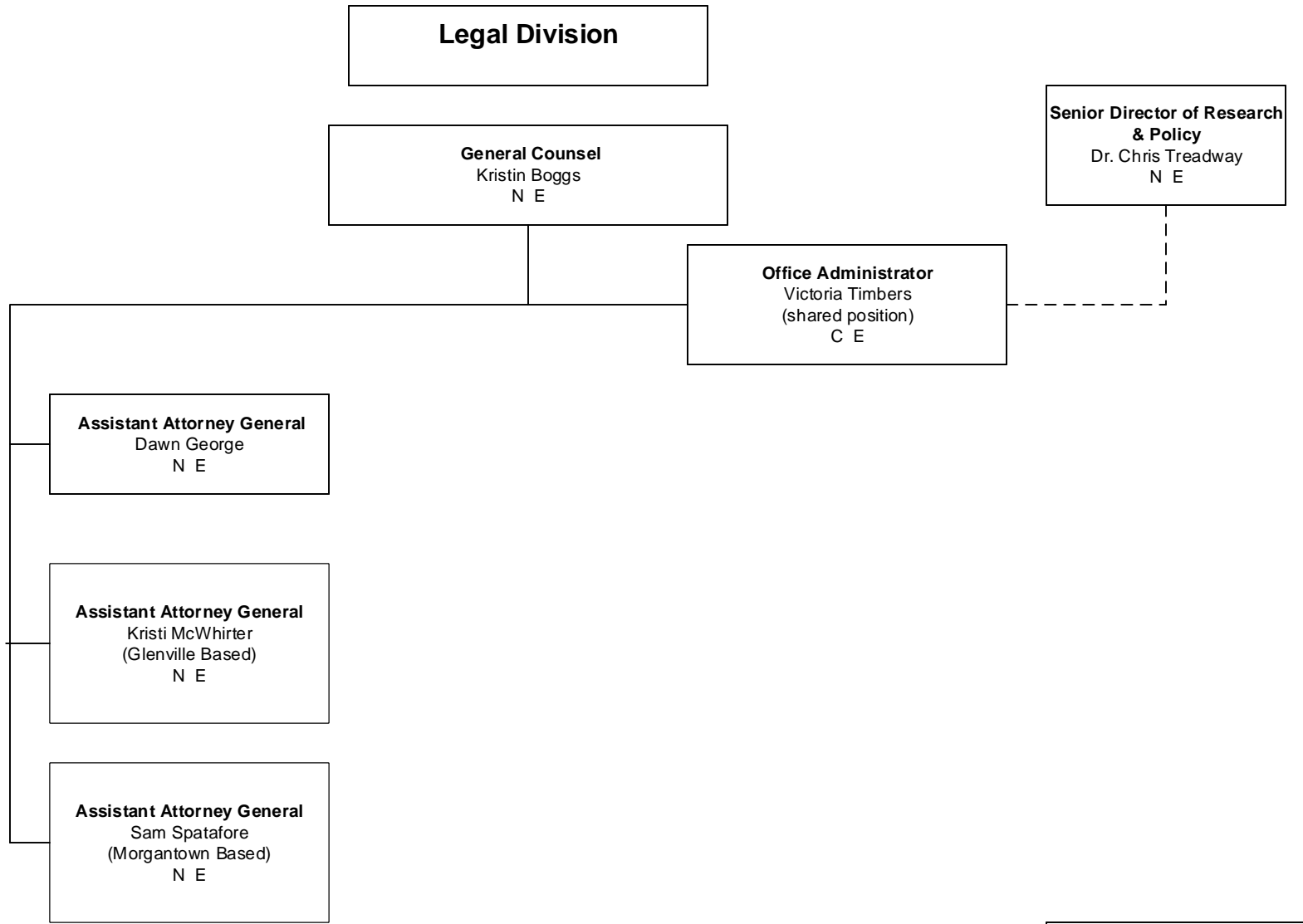
C – Classified Employees  
 N – Non-classified Employees  
 F – Faculty  
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 E – Exempt  
 NE – Non-exempt

**Division of Health Sciences**



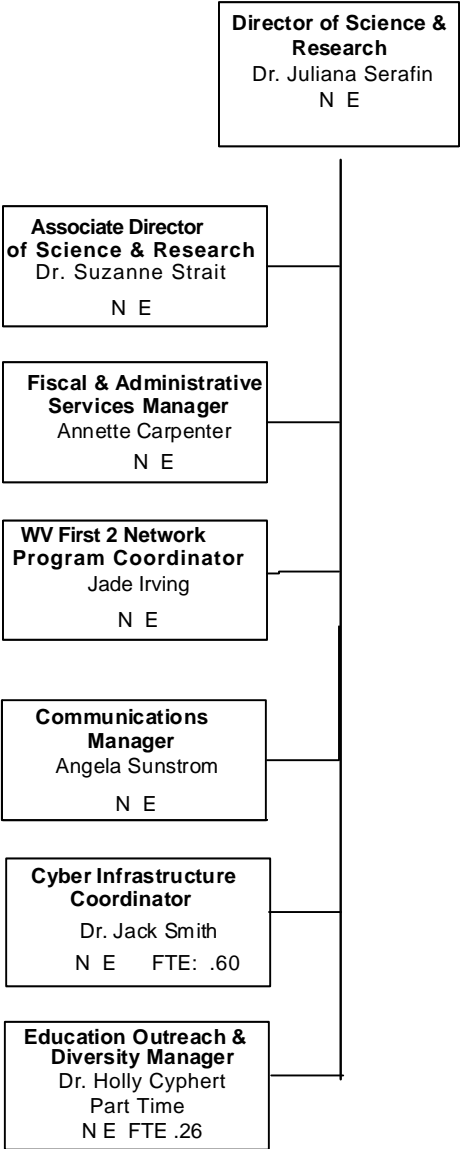
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E – Exempt  
NE – Non-exempt





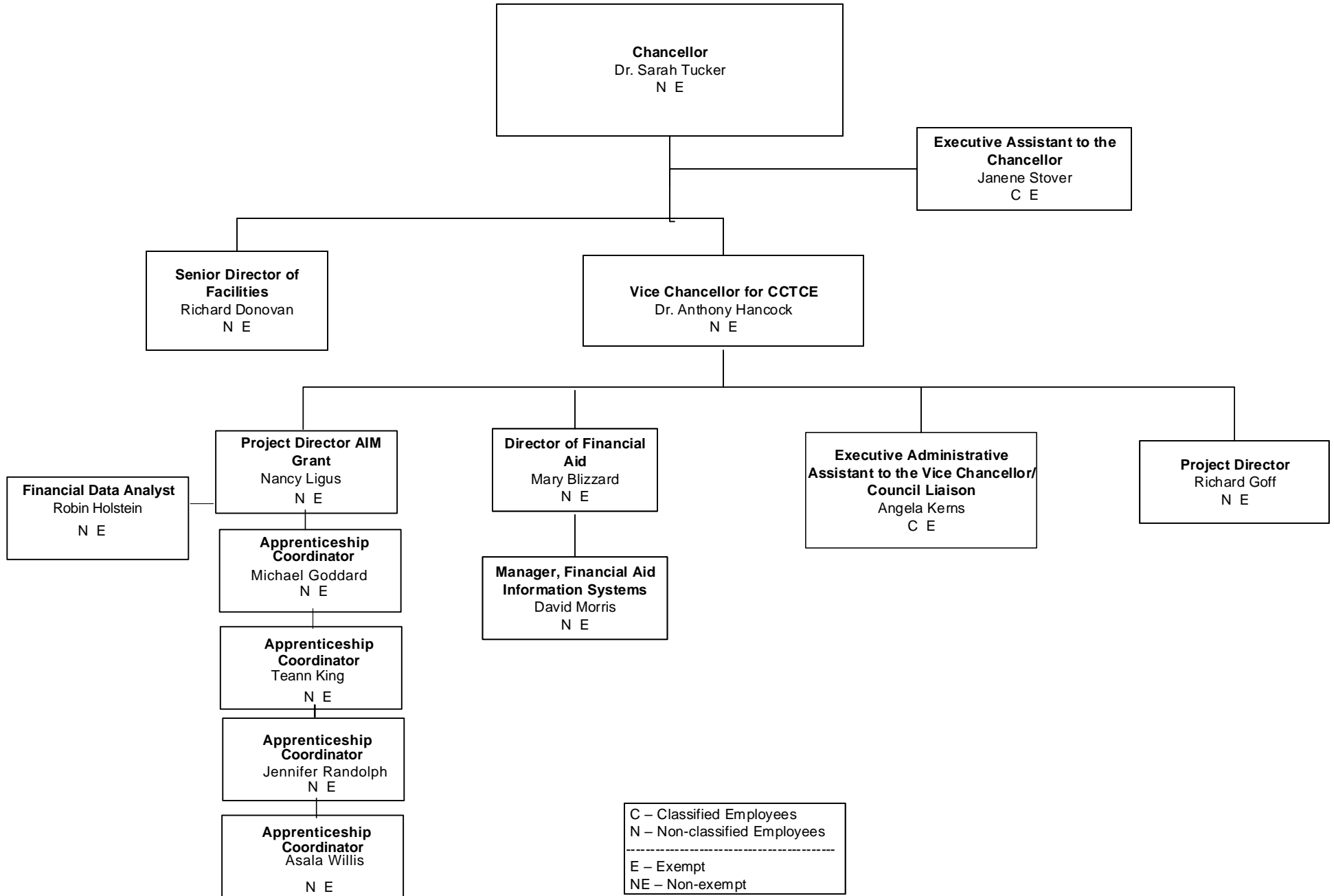
C – Classified Employees  
 N – Non-classified Employees  
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 E – Exempt  
 NE – Non-exempt

**Division of Science and Research**



**C – Classified Employees**  
**N – Non-classified Employees**  
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**E – Exempt**  
**NE – Non-exempt**

**WV Council for Community and Technical College  
Education**



C – Classified Employees  
 N – Non-classified Employees  
 -----  
 E – Exempt  
 NE – Non-exempt



West Virginia Higher Education Policy Commission  
West Virginia Community and Technical College System



1018 Kanawha Boulevard, East, Suite 700  
Charleston, West Virginia 25301

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*Chair*

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[www.whepc.edu](http://www.whepc.edu)  
[www.wvctcs.org](http://www.wvctcs.org)

Sarah Armstrong Tucker, Ph.D.  
*Chancellor*

## **Affirmative Action Program for Minorities and Women**

**West Virginia Higher Education Policy Commission**

**West Virginia Council for Community and Technical College Education**

**Affirmative Action Plan  
for  
Minorities and Women**

**May 1, 2020 through April 30, 2021  
Plan Year**

CONFIDENTIAL, TRADE SECRET, and PRIVATE MATERIAL

For the purposes of this report, the term West Virginia Higher Education Policy Commission includes any of its divisions or subsidiaries. This Affirmative Action Plan contains confidential, trade secret, commercial, and private information of WVHEPC which is protected from disclosure by the Office of Federal Contract Compliance Programs pursuant to the Trade Secrets Act, 18 U.S.C. § 1905. The release of this information could cause substantial harm to WVHEPC or its employees within the meaning of the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 (b) (3), (4), (6) and (7) and the Trade Secrets Act. FOIA protects information in this document from mandatory disclosure to FOIA requestors. See, e.g., *Chrysler v. Brown*, 441 U.S. 281 (1979). Furthermore, release of any trade secret, confidential statistical or commercial information would be arbitrary and capricious in violation of the Administrative Procedure Act. See, e.g., *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1144 (D.C. Cir.), cert. denied, 485 U.S. 977 (1988).

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**AFFIRMATIVE ACTION PLAN  
FOR  
MINORITIES AND WOMEN**

**May 1, 2020 through April 30, 2021  
Plan Year**

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## **Introduction**

West Virginia Higher Education Policy Commission (WVHEPC) has prepared this Affirmative Action Plan (AAP) for the period of May 1, 2020 through April 30, 2021, reaffirming its commitment to the spirit and letter of affirmative action law, including those administered by the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). Through the implementation of this plan WVHEPC continues its efforts to comply with appropriate government regulations and to make the best possible use of personnel while contributing to the betterment of society and the community.

In developing this plan WVHEPC recognizes its duty to ensure equal employment opportunity. The following statement of policy reinforces that belief.

## **Reaffirming Commitment to Equal Employment Opportunity**

In setting forth this plan WVHEPC reaffirms its belief in equal employment opportunity for all employees and applicants for employment in all terms and conditions of employment.

Dr. Sarah Tucker, Chancellor of WVHEPC, designated Patricia Humphries as the Equal Employment Opportunity Administrator (EEO Administrator). Patricia Humphries oversees the plan development, modification, implementation, and reporting requirements and conducts management updates. The EEO Administrator also analyzes WVHEPC's selection process in order to further the principles of equal employment opportunity.

As part of WVHEPC's commitment to this overall process, it will seek to ensure affirmative action to provide equality of opportunity in all aspects of employment, and that all personnel activities, such as the recruitment, selection, training, compensation, benefits, discipline, promotion, transfer, layoff and termination processes remain free of illegal discrimination and harassment based upon age, ethnicity, disability status, national origin, race, religion, gender, sexual or gender orientation, marital status, and veteran status unless prohibited by law. Regular review by WVHEPC, as described in this AAP, helps to ensure compliance with this policy.



## **Internal Dissemination of EEO Policy**

### **41 C.F.R. § 60-1.42**

WVHEPC posts copies of the equal employment opportunity notices that comply with 41 C.F.R. § 60-1.42(a) in conspicuous places (including, where applicable, electronic websites) available to employees and applicants for employment. The following exemplify the methods and locations WVHEPC may use in its ongoing efforts to ensure continuing dissemination of its policy and plan, although WVHEPC may not always use each or any of the below methods, and it may use other methods not listed below:

1. Internal employee manuals contain the policy statement.
2. The policy statement is posted on bulletin boards accessible to employees.
3. WVHEPC references the policy and progress in its annual report, newspaper, magazine and other publications.
4. Orientation meetings for new employees and in-house employment-related training include references to WVHEPC's policy.
5. WVHEPC publications, if any, including those with photographs, generally feature individuals of diverse age, gender, race, color, national origin, gender identity, and sexual orientation where feasible.
6. Pertinent portions of WVHEPC's Affirmative Action Plan are available during regular business hours for inspection by employees and applicants for employment.

## **External Dissemination of EEO Policy**

### **41 C.F.R. § 60-1.41; 41 C.F.R. § 60-1.5**

1. In solicitations or advertisements for employees placed by or on its behalf, WVHEPC complies with at least one of the following methods regarding the dissemination of its equal employment opportunity clause:
  - a. WVHEPC states expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to age, ethnicity, disability status, national origin, race, religion, gender, sexual or gender orientation, marital status, or veteran status unless prohibited by law. 41 C.F.R. § 1.41(a).
  - b. WVHEPC uses display or other advertising that includes an appropriate insignia prescribed by the Deputy Assistant Secretary, subject to the provisions of 18 U.S.C. § 701. 41 C.F.R. § 1.41(b).

- c. WVHEPC uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to age, ethnicity, disability status, national origin, race, religion, gender, sexual or gender orientation, marital status, or veteran status unless prohibited by law. 41 C.F.R. § 1.41(c).
  - d. WVHEPC uses a single advertisement in which appears in clearly-distinguishable type the phrase “an equal employment opportunity employer.” 41 C.F.R. § 1.41(d). When pictures are included in these media, where feasible, efforts will be made to include pictures of individuals of diverse gender, race, national origin, sexual orientation and age.
2. The following exemplify the methods and locations WVHEPC may use in its ongoing efforts to ensure continuing dissemination of its policy and plan, although WVHEPC may not always use all of the below methods, and it may use other methods not listed below:
  - a. WVHEPC notifies subcontractors, suppliers and vendors of the policy about both its obligations to equal employment opportunity and about WVHEPC’s plan.
  - b. WVHEPC advises recruitment sources, minority and female organizations, community agencies, leaders, secondary schools and colleges annually in writing of its commitment to this policy and plan. WVHEPC informs these sources that job applicants will be treated fairly without regard to their age, ethnicity, disability status, national origin, race, religion, gender, sexual or gender orientation, marital status, gender identity, or veteran status.
  - c. WVHEPC communicates with the state employment security office in writing regarding the policy.
  - d. WVHEPC advises prospective employees of the existence of the AAP and makes pertinent portions of it available upon request, during regular business hours.
3. In addition, WVHEPC incorporates by reference the equal employment opportunity and affirmative action clauses into each of its covered Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes and such other contracts and subcontracts as required by law, purchase orders, lease agreements, Government contracts, and other covered contracts (and modifications thereof if not included in the original contract) in accordance with 41. C.F.R. § 60-1.4 (a) – (c) (unless exempted under 41 C.F.R. § 60-1.5).

## **Establishment of Responsibility for Implementation of the Plan**

### **41 C.F.R. § 60-2.17(a)**

#### **A. Identification and Responsibilities of EEO/AA Administrator**

Overall responsibility for WVHEPC's plan rests with the EEO Administrator, Patricia Humphries. Patricia Humphries ensures that the plan complies with all applicable laws, orders and regulations, including but not limited to, Executive Orders 11246, 13496, and their progeny. Specifically, Patricia Humphries or the designated representative's duties include:

1. Developing, maintaining and, where appropriate, modifying WVHEPC's plan to ensure compliance with the EEO/AA law.
2. Developing, and where appropriate, modifying procedures for effectively communicating the plan and its elements both internally and externally.
3. Advising management on EEO/AA progress, reporting potential EEO/AA problem areas, and assisting management in finding equitable solutions, where feasible, to any identifiable EEO/AA problem areas.
4. Evaluating the effectiveness of WVHEPC's plan on a regular basis, and reporting to management.
5. Designing, implementing, and overseeing audit and reporting systems that periodically measure the effectiveness of the total affirmative action program. 41 C.F.R. § 2.17 (d) (1)-(4), identifying need for remedial action, and determining the degree to which objectives have been achieved.
6. Acting as the representative and liaison with any government agencies regarding this plan.
7. Monitoring the policies and procedures with regard to terms and conditions of employment to attempt to ensure compliance with affirmative action obligations.
8. Auditing the content of WVHEPC's bulletin board, and electronic policies, as appropriate, to ensure compliance information is posted and up to date.
9. Keeping management up to date on the latest developments in the areas of EEO and affirmative action.
10. Serving as a liaison between WVHEPC and organizations, such as minority organizations and women's organizations.
11. Assisting in the investigation, handling and disposition of employee harassment and discrimination complaints.
12. Discussing EEO/AA policies with all personnel, including management, to ensure that WVHEPC's policies and the need for their support are understood at all levels.

13. Reviewing WVHEPC's AAP for qualified women and minorities with all managers and supervisors to ensure the policy is understood and followed in all personnel actions.
14. Conducting periodic reviews of offices to ensure compliance in the areas of proper display of posters and notices, comparable facilities for both sexes, and opportunity for participation in college-sponsored recreational, educational and social activities.
15. Auditing training programs, hiring, and promotion patterns.

**B. Management Responsibilities**

Line and upper management share responsibility for the plan, including but not limited to the following:

1. Assisting in auditing plan progress, including identifying problem areas, formulating solutions, establishing appropriate goals, and developing necessary training programs.
2. Reviewing the qualifications of applicants and employees to ensure qualified individuals are treated in a nondiscriminatory manner in hiring, promotion, transfers, and termination actions.
3. Making available career counseling, when appropriate.
4. Reviewing the job performance of each employee to assess whether personnel actions are justified based on the employee and his or her duties.
5. Reviewing position descriptions of the jobs in the manager's area or department to see that they adequately reflect the job to be performed.
6. Assisting subordinates and upper management in the prevention of harassment.

## Identification of Areas for Discussion

### 41 C.F.R. § 60-2.17(b)

WVHEPC's commitment to fully implement this policy and plan include periodic reviews of mission critical workforce factors in a number of ways, including performing an in-depth analysis of its total employment process to determine whether and where impediments to equal employment opportunity exist. These analyses include:

1. The workforce by organizational unit and job group of minority or female utilization and distribution;
2. Personnel activity to determine whether there are selection disparities;
3. Compensation systems to determine if there are gender-, race-, or ethnicity-based disparities;
4. Selection, recruitment, referral, and other personnel procedures to determine whether they result in employment or placement disparities of minorities or women; and,
5. Any other areas that might impact the success of the affirmative action program. 41 C.F.R. § 2.17 (b)(1)-(5), including, for example, WVHEPC's review of:
  - a. The workforce composition by race and sex to compare it to the availability of these groups;
  - b. WVHEPC's applicant flow compared to the availability for the protected groups;
  - c. A comparison of hires to applicants pertaining to minorities and women;
  - d. Compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities;
  - e. Selection forms, such as applications for employment, to ensure they comply with federal and state employment laws;
  - f. Processes to ensure there are no artificially-created barriers or restrictive seniority provisions; and,
  - g. Training opportunities to ensure they are available to minorities and women.

Identification of problem areas are discussed in next section titled Narrative Discussion of Goals.

## **Narrative Discussion of Goals**

The West Virginia Higher Education Policy Commission plan has 69 employees, including 6 minorities and 47 females. There were no goals for minorities and/or women in this plan.

- 1 - Executive/Administrative/Managerial - This group consists of 19 employees, of whom 1 is a minority and 11 are females. There is no need to set a placement goal at this time for minorities or females.
- 3 - Professional Non-Faculty - This group consists of 34 employees, of whom 2 are minorities and 24 are females. There is no need to set a placement goal at this time for minorities or females.
- 4 - Clerical and Secretarial - This group consists of 3 employees, of whom 1 is a minority and 3 are females. There is no need to set a placement goal at this time for minorities or females.
- 5 - Technical and Paraprofessional - This group consists of 13 employees, of whom 2 are minorities and 9 are females. There is no need to set a placement goal at this time for minorities or females.

WVHEPC will use alternate recruitment sources when necessary to attract more qualified external applicants. In those instances where statistical adverse impact is indicated, WVHEPC will take action as outlined in the Action-Oriented Programs Section to monitor and eliminate any problem areas, as well as other similar actions.

## **Development & Execution of Action-Oriented Programs**

### **41 C.F.R. § 60-2.17(c)**

WVHEPC has instituted action-oriented programs designed to eliminate any problem areas, should they exist, in accordance with § 60-2.17(b), and to help achieve specific affirmative action goals. WVHEPC also makes a good-faith effort to remove identified barriers, expand employment opportunities, and produce measurable results. These programs may include items such as:

1. Conducting periodic reviews of job descriptions attempting to ensure they accurately reflect job-related duties and responsibilities.
2. Annually reviewing job qualifications by department and job title for job-relatedness, and using job performance criteria.
3. Making job descriptions and qualifications available to recruiting sources and to all members of management involved in the recruiting, screening, selection, and promotion processes.
4. Making good-faith efforts to select the most qualified candidates. WVHEPC recognizes the duty, should the need arise, to make good faith efforts to remedy any statistically significant underutilization of minorities and women. Accordingly, WVHEPC commits to evaluating the total selection process to ensure decisions are made in a nondiscriminatory manner through:
  - a. Reviewing the job applications and other pre-employment forms to ensure information requested is job-related;
  - b. Evaluating selection methods that may have a disparate impact to ensure that they are job-related and consistent with business necessity;
  - c. Providing assistance, such as training and guidance on proper interviewing techniques and EEO training, to employees, management, and supervisory staff, including, but not limited to, those who are involved in the recruitment, selection, discipline and other related processes, so that personnel actions remain nondiscriminatory; and
  - d. Reviewing selection techniques and employment standards.
5. WVHEPC employs appropriate methods to attempt to improve recruitment and increase the flow of qualified minorities and women applicants in its recruiting process, including a number of the following actions:
  - a. Including the phrase, "Equal Opportunity/Affirmative Action Employer" in printed employment advertisements;
  - b. Placing help-wanted advertisements, when appropriate, in local minority news media and women's interest media;

- c. Disseminating information on job opportunities to organizations representing minorities, women, and employment development agencies when job opportunities occur;
  - d. Encouraging all employees to refer qualified applicants;
  - e. Actively recruiting in secondary schools, junior colleges, colleges and universities with predominantly minority or female enrollments where underutilization exists in such areas, and
  - f. Requesting employment agencies to refer qualified minorities and women.
  - g. WVHEPC considers using special employment programs designed to deal with underutilization. Business conditions and other feasibility matters remain the key factor in any decision to develop/implement such programs.
  - h. Whenever feasible and appropriate, WVHEPC participates in job fairs, career days, youth-motivation programs and other programs that foster exposure for qualified minorities and women.
  - i. WVHEPC encourages minorities and women to participate in college-sponsored activities and programs.
  - j. WVHEPC utilizes various community organizations and schools as referral sources.
6. WVHEPC reviews promotion criteria and procedures so that job qualifications form the basis for the promotional decisions without regard age, ethnicity, disability status, national origin, race, religion, gender, sexual or gender orientation, gender identity, marital status, or veteran status. WVHEPC monitors promotion rates for minorities and women and, when necessary, may employ one or more of the following procedures:
- a. Maintaining an inventory of current minority and women employees to determine special job-related talents, skills and experience.
  - b. Providing job training, job-related courses or certificate programs.
  - c. Reviewing work specifications and job qualifications to ensure job-relatedness.
  - d. Reviewing promotion decisions for possible impact on women or minorities.
  - e. Conducting career counseling, where appropriate, during performance evaluations.
  - f. Informing employees about educational programs and other opportunities available to improve their employment prospects.
  - g. Reviewing seniority practices for possible impact on women and minorities.
  - h. Reviewing college-sponsored social and recreational activities to ensure non-discriminatory participation and availability.



- i. Ensuring that all employees are given equal opportunity for promotion. This is achieved by:
  1. Generally posting or otherwise announcing most promotional opportunities.
  2. All vacant and newly created positions will be posted. Ensure all positions are posted on WVHEPC's intranet or sent by electronic email to employees. There may be simultaneous internal and external posting of these positions.
  3. Offering counseling to assist employees in identifying promotional opportunities, training and educational programs to enhance promotions and opportunities for job rotation or transfer; and
  4. Evaluating job requirements for promotion.
- j. The Chancellor has flexibility to appoint his/her immediate staff.

## **Internal Audit and Reporting System**

### **41 C.F.R. § 60-2.17(d)**

1. Patricia Humphries, WVHEPC's EEO/AA Administrator, maintains an internal audit system to attempt to oversee WVHEPC's Affirmative Action Plan and assess progress. The EEO Administrator is responsible for ensuring that the formal AAP documents are developed and prepared and for the effective AAP implementation; however, responsibility is likewise vested with each department manager and supervisor, depending upon the specific responsibility. The audit system is designed and implemented to measure the effectiveness of the total affirmative action program [41 C.F.R. § 2.17 (d)(1)-(4)], including:
  - a. Monitoring records of all personnel activity, including: referrals, placements, transfers, promotions, terminations, and compensation, at all levels, to ensure the nondiscriminatory policy is carried out,
  - b. Requiring internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained,
  - c. Reviewing reports at all levels of management; and
  - d. Advising top management of the program's effectiveness and submitting recommendations to improve unsatisfactory performance. 41 C.F.R. § 2.17 (d) (1)-(4).
2. WVHEPC reviews various employment decisions, such as job referrals, hiring decisions, transfers, promotions, and terminations. WVHEPC maintains summary data where necessary and feasible, and conducts regular reviews at least annually.

3. There is no "de facto" (in practice without being officially established) segregation. Further, WVHEPC ensures that facilities, as broadly defined in 41 C.F.R. § 60-1.8, provided for employees are provided in such a manner that segregation on the basis of age, ethnicity, disability status, national origin, race, religion, gender, gender identity, sexual or gender orientation, marital status, or veteran status cannot result, provided that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to ensure privacy between the sexes.
4. WVHEPC complies with required records retention provisions set forth in 41 C.F.R. §60-1.12 and elsewhere in the applicable OFCCP regulations, and maintains a) employment applications (generally for two years); b) summary data of applicant flow by identifying, at least, total applicants, total minority applicants, and total female applicants, where necessary and feasible, and conducts regular reviews at least annually; c) applicant flow showing the name, race, sex, date of application, job title, interview status, and the action taken for all individuals applying for job opportunities, and the relevant applicant/hire decisions; d) summary data of external job offers and hires, promotions, resignations, terminations, and layoffs by job group and by sex and minority group identification; e) and records pertaining to its compensation system.
5. Provide needed reports to managers and supervisors regarding the results of the audit as well as WVHEPC's overall progress in the area of EEO/AA. Any recommended actions should be made as well. Reports shall be made to senior management on at least an annual basis.

## **Guidelines for Prevention of Sex Discrimination**

### **41 C.F.R. § 60-20.1 et seq.**

WVHEPC supports the promotion and ensuring of equal employment opportunity of its employees and applicants without regard to sex, and endorses and complies with the following policy statements.

1. WVHEPC employment advertisements do not express a sex preference nor does WVHEPC place advertisements in columns designated "males" or "females," unless sex is a bona fide occupation obligation. 41 C.F.R. §60-20.2(a).
2. Employees of both sexes at WVHEPC shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupation obligation. 41 C.F.R. §60-20.2.
3. WVHEPC maintains gender-neutral personnel policies that expressly indicate that there shall be no gender discrimination against employees. The terms and conditions of any written collective bargaining agreements shall not be inconsistent with these guidelines. 41 C.F.R. §60-20.3(a).
4. WVHEPC makes no distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. 41 C.F.R §60-20.3(c).
5. WVHEPC will not make any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex, or deny employment to women with young children unless it has the same exclusionary policies for men, or terminate

the employment of an employee of one sex in a job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex. 41 C.F.R. § 60.20.3(d).

6. WVHEPC has policies and practices to ensure appropriate physical facilities to both sexes. 41 C.F.R. § 60-20.3(e).
7. WVHEPC will not deny a female employee the right to any job she is qualified to perform in reliance on a State “protective” law regarding, for example, prohibiting women from performing work such as a bartender, or for working at jobs requiring more than a certain number of hours or lifting above a certain weight. 41 C.F.R. § 60-20.3(f).
8. WVHEPC endorses and complies with the 1978 Pregnancy Discrimination Act, as it amended Title VII of the Civil Rights Act of 1964. WVHEPC applies any leave of absence policy uniformly, regardless of sex. 41 C.F.R. § 60-20.3(g).
9. WVHEPC must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age. 41 C.F.R. § 60-20.3(h).
10. WVHEPC's seniority lines and lists must not be based on sex. 41 C.F.R. § 60-20.4.
11. WVHEPC's wage schedules are not related to or based on the sex of an employee. 41 C.F.R. § 60-20.5(a). Further, WVHEPC does not discriminatorily restrict one sex to certain job classifications, and instead must take steps to make jobs available to all qualified employees in all classifications without regard to sex. 41 C.F.R. § 60-20.5(b).
12. When appropriate, WVHEPC makes affirmative efforts to increase the number and percentage of women in the workforce, including, but not limited to the following:
  - a. WVHEPC recruits women and encourages existing women employees to apply for positions historically labeled by society as "traditionally male".
  - b. WVHEPC guarantees equal, gender-neutral access to training and tuition reimbursement programs, including management training, and other types of workplace training programs.
  - c. WVHEPC informs management of its affirmative action responsibilities. 41 C.F.R § 60-20.6.

## **Policy with Respect to Religion/National Origin**

### **41 C.F.R. § 60-50.1 et seq.**

Pursuant to the guidelines prohibiting discrimination on the basis of religion or national origin, 41 C.F.R. § 60-50.1, et seq., WVHEPC hereby reaffirms that it does not discriminate against employees, or applicants for employment, because of religion or national origin. WVHEPC takes affirmative action to seek to ensure that employees or applicants for employment are treated without regard to their religion or national origin in all aspects of the terms and conditions of employment, such as upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay (or other forms of compensation), and selection for training.

WVHEPC has reviewed its employment practices and determined that its employees, including those who belong to religious or ethnic groups, have received fair consideration for job opportunities. Based upon its review, and depending upon the circumstances, WVHEPC will undertake appropriate actions, which may include one or more of the following activities:

1. Issuing a policy directive to employees reaffirming the WVHEPC's obligation to provide equal employment opportunity without regard to religion or national origin. This policy will be communicated in such a manner as to foster understanding, acceptance, and support among executives, managers, supervisors, and other employees, and to encourage such persons to take the necessary action to aid WVHEPC in meeting its obligations.
2. Developing internal procedures to seek to ensure that WVHEPC's obligation to provide equal employment opportunity, without regard to religion or national origin, is being fully implemented. Specifically, employment activities are reviewed by the EEO Administrator.
3. Informing management annually of its commitment to equal employment opportunity, without regard to religion or national origin.
4. Enlisting the assistance and support of recruitment sources for this commitment.

WVHEPC acknowledges its responsibility to make reasonable accommodations for the religious observances and practices of its existing or prospective employees under the terms of Title VII of the Civil Rights Act of 1964. An accommodation for religious purposes will be denied should WVHEPC determine that it would have to suffer undue hardship. During this accommodation evaluation, the following factors will continue to be considered by WVHEPC:

1. Business necessity;
2. Financial costs and expenses; and
3. Resulting personnel problems.

## **Organizational Profile**

Contractors and subcontractors are required to include in their AAPs an organizational profile of their workforce using either a “workforce analysis” or “organizational display” that provides detailed data reflecting staffing patterns within the establishment. 41 C.F.R. § 60-2.11. An organizational profile shows the staffing pattern within a contractor’s establishment. This profile assists an employer in identifying where, in the workforce of its site which is the subject of this AAP, women or minorities are underrepresented or concentrated. A workforce analysis is used in this AAP, which lists each job title from the lowest paid to the highest paid within each department or similar organizational unit.

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Administrative Services Division</i>												
Lines of Progression: NO												
Title	EEO	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority	
Senior IT Systems Administrator	3	1	1	1	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0			
Director of Administrative Services	3	1	0	0	0	0	0	0	0	0	0	
			1	1	0	0	0	0	0			
Executive Vice Chancellor for Administration	1	1	1	1	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0			
<b>Summary of Administrative Services Division</b>		3	2	2	0	0	0	0	0	0	0	
			1	1	0	0	0	0	0			

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Commission Office</i>											
Lines of Progression: NO											
Title	EEO	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Director of Communications	3	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0
<b>Summary of Commission Office</b>		1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

*Commission Office and WV Council for Community and Technical College Education*

Lines of Progression: NO

<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Interim Chancellor for WVHEPC and Chancellor for WV Council of Community &	1	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	
<b>Summary of Commission Office and WV Council for Community and Technical College Education</b>		1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	



# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Academic Affairs</i>												
Lines of Progression: NO												
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>	
Executive Administrative Assistant	5	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Director of Academic Progarmming	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Director of Statewide Academic Initiatives	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Director of Erma Byrd Center	1	1	0	0	0	0	0	0	0	0	1	1
			1	0	1	0	0	0	0	0		
Vice Chancellor for Academic Affairs	1	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0		
<b>Summary of Division of Academic Affairs</b>		5	1	1	0	0	0	0	0	0	1	1
			4	3	1	0	0	0	0	0		

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Finance and Facilities</i>												
Lines of Progression: NO												
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Grant Resources Associate	5	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Accounting Assistant II	4	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Program Coordinator	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Accountant Senior	3	2	1	1	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Budget Officer	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Senior Director of Facilities	3	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	
Director of Procurement	1	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Director of Finance and Grants Compliance	1	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Vice Chancellor for Finance	1	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	
<b>Summary of Division of Finance and Facilities</b>		10	3	3	0	0	0	0	0	0	0	0
			7	7	0	0	0	0	0	0	0	

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Financial Aid</i>												
Lines of Progression: NO												
Title	EEO	Total	Male	Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Administrative Associate	4	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Administrative Assistant Senior	5	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
FinanAid Manager	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Statewide Coordinator	1	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Financial Aid Counselor	3	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0		
WV Invests Grant Program Administrator	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
WV Educational Loan Program Administrator	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		
Senior Director of Financial Aid	1	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0		
<b>Summary of Division of Financial Aid</b>		8	2	2	0	0	0	0	0	0	0	0
			6	6	0	0	0	0	0	0		

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Health Sciences</i>											
Lines of Progression: NO											
Title	EEO	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Director of Behavioral Health Programs	3	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0
<b>Summary of Division of Health Sciences</b>		1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Human Resources</i>													
Lines of Progression: NO													
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native</b>	<b>Hawaiian</b>	<b>Indian</b>	<b>Two or</b>	<b>Minority</b>
												<b>More</b>	
Human Resources Representative Senior	3	1	0	0	0	0	0	0	0	0	0	0	1
			1	0	1	0	0	0	0	0	0		
Program Coordinator Senior	3	1	0	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0		
Director of Classification and Compensation	3	1	1	1	0	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0		
Vice Chancellor for Human Resources	1	1	0	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0		
<b>Summary of Division of Human Resources</b>		4	1	1	0	0	0	0	0	0	0	0	1
			3	2	1	0	0	0	0	0	0		

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Policy and Planning</i>												
Lines of Progression: NO												
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Institutional Research Analyst Senior	5	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	0
Senior Programmer/Developer	5	2	1	0	0	0	0	1	0	0	0	1
			1	1	0	0	0	0	0	0	0	0
Senior Research and Policy Analyst	5	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	0
Senior Programmer and Data Analyst	5	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	0
Post Doctoral Research and Policy Analyst	5	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	0
WV Statewide Longitudinal Education Data Project Manager	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	0
Director of Information Systems	3	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	0
Senior Director of Research and Policy	3	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	0
<b>Summary of Division of Policy and Planning</b>		9	5	4	0	0	0	1	0	0	0	1
			4	4	0	0	0	0	0	0	0	0

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Science and Research/EPSCoR</i>												
Lines of Progression: NO												
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>	
Cyber Infrastructure Coordinator	5	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0		0
Communications Manager	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		0
First2 WV Network Program Coordinator	3	1	0	0	0	0	0	0	0	0	0	1
			1	0	1	0	0	0	0	0		0
Education, Outreach and Diversity Manager	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		0
Manager, Fiscal and Administrative Services	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		0
Senior Director, Division of Science and Research	1	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0		0
<b>Summary of Division of Science and Research/EPSCoR</b>		6	1	1	0	0	0	0	0	0		1
			5	4	1	0	0	0	0	0		0

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Student Affairs</i>												
Lines of Progression: NO												
Title	EEO	Total	Male	Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Coordinator of Access and Success Programs	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Coordinator of Technology and Digital Outreach	3	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	
Communications Specialist	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
coordinator of WV GEAR UP Transistion and First Year Programs	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Coordinator of Curriculum and Professional Development	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Coordinator of Research and Evaluation	3	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
Assistant Director for WV GEAR UP	1	1	1	1	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	
Senior Director of Student Services	1	1	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0	
<b>Summary of Division of Student Affairs</b>		8	2	2	0	0	0	0	0	0	0	0
			6	6	0	0	0	0	0	0	0	



# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Division of Student Affairs, Veterans' Education and Training</i>												
Lines of Progression: NO												
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>	
Program Manager	3	1	1 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0	
Director of Veterans' Education and Training Programs	1	1	1 0	1 0	0 0	0 0	0 0	0 0	0 0	0 0	0	
<b>Summary of Division of Student Affairs, Veterans' Education and Training</b>		2	2 0	2 0	0 0	0 0	0 0	0 0	0 0	0 0	0	

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>Legal Division</i>											
Lines of Progression: NO											
Title	EEO	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Office Administrator	5	1	0	0	0	0	0	0	0	0	1
			1	0	1	0	0	0	0		
General Counsel	1	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0		
<b>Summary of Legal Division</b>		2	0	0	0	0	0	0	0	0	1
			2	1	1	0	0	0	0	0	

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>West Virginia Center for Nursing</i>											
Lines of Progression: NO											
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Administrator, West Virginia Center for Nursing	5	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0
<b>Summary of West Virginia Center for Nursing</b>		1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>WV Council for Community and Technical College Education</i>													
Lines of Progression: NO													
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native</b>	<b>Hawaiian</b>	<b>Indian</b>	<b>Two or</b>	<b>Minority</b>
												<b>More</b>	
Executive Assistant to the Chancellor	5	1	0	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	0		
Manager, Financial Aid Information Systems	3	1	1	1	0	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0			
Project Director	1	1	1	1	0	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0			
Director of Financial Aid for Community and Technical College Systems	1	1	0	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0			
Project Director, AIM Grant	1	1	0	0	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0			
Vice Chancellor, WV Council for Community and Technical College Education	1	1	1	1	0	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0			
<b>Summary of WV Council for Community and Technical College Education</b>		6	3	3	0	0	0	0	0	0	0	0	0
			3	3	0	0	0	0	0	0			

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>WV Higher Education Policy Commission Office</i>											
Lines of Progression: NO											
<b>Title</b>	<b>EEO</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Executive Secretary to the Chancellor	4	1	0	0	0	0	0	0	0	0	1
			1	0	0	0	0	0	0	1	
Board and Operations Coordinator	3	1	0	0	0	0	0	0	0	0	0
			1	1	0	0	0	0	0	0	
<b>Summary of WV Higher Education Policy Commission Office</b>		2	0	0	0	0	0	0	0	0	1
			2	1	0	0	0	0	0	1	

# Workforce Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
<i>Summary</i>	69	22	21	0	0	1	0	0	0	6
		47	42	4	0	0	0	0	1	

## **Job Group Analysis**

Contractors and subcontractors are required to include in their AAPs a “job group analysis” by combining jobs at the establishment with similar content, wage rates, and opportunities to form job groups. 41 C.F.R. § 60-2.12. The job group analysis is a contractor’s first comparison of the representation of minorities and women in its workforce with the estimated availability of minorities and women to be employed. The job group is created by first sorting the various jobs at the establishment into job groups, which is a collection of jobs in an organization with similar job content (field of work and/or skill level), similar promotional opportunities, and similar compensation. The job groups then are developed to fit the unique characteristics of each organizational unit, taking into account the size, type, and complexity of the work performed. Contractors, after combining the job titles for the job group analysis, must then separately provide the percentage of minorities and the percentage of women they employ in each job group.

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

1 - Executive/Administrative/Managerial										
Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Statewide Coordinator	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Assistant Director for WV GEAR UP	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Director of Erma Byrd Center	1	0	0	0	0	0	0	0	0	1
		1	0	1	0	0	0	0	0	
Director of Veterans' Education and Training Programs	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Director of Procurement	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Project Director	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Director of Finance and Grants Compliance	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Director of Financial Aid for Community and Technical College Systems	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Project Director, AIM Grant	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Senior Director of Financial Aid	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Vice Chancellor, WV Council for Community and Technical College Education	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
General Counsel	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	



# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>1 - Executive/Administrative/Managerial</i>										
<b>Title</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Senior Director of Student Services	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Vice Chancellor for Human Resources	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Senior Director, Division of Science and Research	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Vice Chancellor for Finance	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Executive Vice Chancellor for Administration	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Vice Chancellor for Academic Affairs	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Interim Chancellor for WVHEPC and Chancellor for WV Council of Community &	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
<b>Summary of 1 - Executive/Administrative/Managerial</b>	19	8	8	0	0	0	0	0	0	1
		11	10	1	0	0	0	0	0	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

3 - Professional Non-Faculty										
Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Program Coordinator	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Human Resources Representative Senior	1	0	0	0	0	0	0	0	0	1
		1	0	1	0	0	0	0	0	
Accountant Senior	2	1	1	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Program Coordinator Senior	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
FinanAid Manager	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Financial Aid Counselor	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Coordinator of Access and Success Programs	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Coordinator of Technology and Digital Outreach	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Communications Specialist	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
coordinator of WV GEAR UP Transistion and First Year Programs	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Board and Operations Coodinator	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Communications Manager	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

3 - Professional Non-Faculty										
Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
First2 WV Network Program Coordinator	1	0	0	0	0	0	0	0	0	1
		1	0	1	0	0	0	0	0	
Program Manager	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Coordinator of Curriculum and Professional Development	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Coordinator of Research and Evaluation	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Education, Outreach and Diversity Manager	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
WV Invests Grant Program Administrator	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Budget Officer	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Manager, Financial Aid Information Systems	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Senior IT Systems Administrator	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Director of Behavioral Health Programs	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
WV Educational Loan Program Administrator	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Director of Classification and Compensation	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<b>3 - Professional Non-Faculty</b>											
<b>Title</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
WV Statewide Longitudinal Education Data Project Manager	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Director of Academic Programming	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Director of Communications	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Director of Statewide Academic Initiatives	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Manager, Fiscal and Administrative Services	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Director of Information Systems	1	1	1	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	
Senior Director of Research and Policy	1	1	1	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	
Director of Administrative Services	1	0	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0	
Senior Director of Facilities	1	1	1	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	
<b>Summary of 3 - Professional Non-Faculty</b>	<b>34</b>	<b>10</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
		<b>24</b>	<b>22</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>4 - Clerical and Secretarial</i>										
<b>Title</b>	<b>Total</b>	<b>Male Female</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native Hawaiian</b>	<b>Indian</b>	<b>Two or More</b>	<b>Minority</b>
Administrative Associate	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0
Accounting Assistant II	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	0
Executive Secretary to the Chancellor	1	0	0	0	0	0	0	0	0	1
		1	0	0	0	0	0	0	1	1
<b>Summary of 4 - Clerical and Secretarial</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
		<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

5 - Technical and Paraprofessional										
Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
Grant Resources Associate	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Office Administrator	1	0	0	0	0	0	0	0	0	1
		1	0	1	0	0	0	0	0	
Administrative Assistant Senior	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Executive Administrative Assistant	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Institutional Research Analyst Senior	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Executive Assistant to the Chancellor	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Senior Programmer/Developer	2	1	0	0	0	1	0	0	0	1
		1	1	0	0	0	0	0	0	
Senior Research and Policy Analyst	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Senior Programmer and Data Analyst	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Post Doctoral Research and Policy Analyst	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	
Administrator, West Virginia Center for Nursing	1	0	0	0	0	0	0	0	0	0
		1	1	0	0	0	0	0	0	
Cyber Infrastructure Coordinator	1	1	1	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

*5 - Technical and Paraprofessional*

Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
<i>Summary of 5 - Technical and Paraprofessional</i>	13	4	3	0	0	1	0	0	0	2
		9	8	1	0	0	0	0	0	

# Job Group Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

Title	Total	Male Female	White	Black	Hispanic	Asian	Native Hawaiian	Indian	Two or More	Minority
<i>Summary</i>	69	22	21	0	0	1	0	0	0	6
		47	42	4	0	0	0	0	1	



## **Availability Analysis**

Contractors and covered Federal subcontractors, after aggregating individual jobs into job groups, are then required to determine the availability of women and minorities for those job groups. 41 C.F.R. § 60-2.14. “Availability” is a percentage estimate of the women and minorities who have the skills required to perform the jobs within the job groups. To determine the availability percentages, contractors are required to consider two factors: 1) factors reflecting the availability outside the contractor’s workforce (such as people in the immediate labor area or reasonable recruitment area); and, 2) factors affecting the availability inside the contractor’s own workforce (such as people who are qualified and available by transfer, promotion, or training). Contractors typically rely on the most current U.S. Census data to develop their external availability factors, and on their own workforce numbers to develop their internal availability factors. Both external and internal factors must be considered, but contractors may “weight” each of the two factors according to each factor’s relevance to the job group in question. Such weighting is included in the following availability statistics for each job group.

After a contractor has formulated job groups and determined the minority and female availability percentages for each job group, it must then compare the actual utilization of minorities and women in each job group with their estimated availability, and identify those job groups where the percentage of women and/or minorities employed is less than would reasonably be expected given their availability. 41 C.F.R. § 60-2.15.

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 1 - Executive/Administrative/Managerial

Factor	Description	Raw Statistics			Weighted Factor		Source of Statistics	Reason for Weighting
		Minority	Female	Weight	Minority	Female		
1	The percentage of minorities or women with requisite skills in the RRA. The RRA is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.	18	54	95	17	52	2010 Census EEO Special File for appropriate Occupational Titles. See supporting documents.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
2	The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees that, with reasonably provided training, become qualified during the AAP year.	6	71	5	0	4	Incumbent work force for those Job Groups that constitute "feeders" to this Job Group.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
Job Group Size: 19		100						
		Final Availability (%)			17	55		

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 1 - Executive/Administrative/Managerial

### Factor 1: External Availability

#### External Availability from the RRA

Census Areas for RRA		Value			
United States		30			
Census Codes used for RRA			Raw Statistics (%)		
			Minority	Female	Value
0020 General and operations managers			19	29	1
0120 Financial managers			24	54	4
0136 Human resources managers			28	59	1
0150 Purchasing managers			21	45	1
0230 Education administrators			25	64	9
0430 Miscellaneous managers, including funeral service managers a			22	35	2
2100 Lawyers, and judges, magistrates, and other judicial workers			14	33	1
West Virginia		70			
Census Codes used for RRA			Raw Statistics (%)		
			Minority	Female	Value
0020 General and operations managers			4	28	1
0120 Financial managers			3	63	4
0136 Human resources managers			9	53	1
0150 Purchasing managers			0	26	1
0230 Education administrators			5	56	9
0430 Miscellaneous managers, including funeral service managers a			6	33	2

RRA = Reasonable Recruitment Area

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 1 - Executive/Administrative/Managerial

### Factor 1: External Availability

2100 Lawyers, and judges, magistrates, and other judicial workers		4	28	1
<b>Ohio</b>	<b>70</b>	<b>Raw Statistics (%)</b>		
<b>Census Codes used for RRA</b>		<b>Minority</b>	<b>Female</b>	<b>Value</b>
0020 General and operations managers		9	29	1
0120 Financial managers		12	53	4
0136 Human resources managers		13	63	1
0150 Purchasing managers		11	41	1
0230 Education administrators		16	60	9
0430 Miscellaneous managers, including funeral service managers a		11	31	2
2100 Lawyers, and judges, magistrates, and other judicial workers		9	30	1
<b>Pennsylvania</b>	<b>70</b>	<b>Raw Statistics (%)</b>		
<b>Census Codes used for RRA</b>		<b>Minority</b>	<b>Female</b>	<b>Value</b>
0020 General and operations managers		9	27	1
0120 Financial managers		11	52	4
0136 Human resources managers		14	59	1
0150 Purchasing managers		11	40	1
0230 Education administrators		15	63	9
0430 Miscellaneous managers, including funeral service managers a		11	33	2
2100 Lawyers, and judges, magistrates, and other judicial workers		8	32	1

RRA = Reasonable Recruitment Area

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 1 - Executive/Administrative/Managerial

### Factor 1: External Availability

Kentucky		70	Raw Statistics (%)		
Census Codes used for RRA			Minority	Female	Value
0020 General and operations managers			7	27	1
0120 Financial managers			6	56	4
0136 Human resources managers			9	61	1
0150 Purchasing managers			9	39	1
0230 Education administrators			12	66	9
0430 Miscellaneous managers, including funeral service managers a			7	34	2
2100 Lawyers, and judges, magistrates, and other judicial workers			6	31	1
Virginia		70	Raw Statistics (%)		
Census Codes used for RRA			Minority	Female	Value
0020 General and operations managers			22	29	1
0120 Financial managers			26	57	4
0136 Human resources managers			28	61	1
0150 Purchasing managers			22	51	1
0230 Education administrators			26	68	9
0430 Miscellaneous managers, including funeral service managers a			21	35	2
2100 Lawyers, and judges, magistrates, and other judicial workers			15	37	1

RRA = Reasonable Recruitment Area

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 1 - Executive/Administrative/Managerial

### Factor 1: External Availability

Maryland		70	Raw Statistics (%)		
Census Codes used for RRA			Minority	Female	Value
0020 General and operations managers			28	34	1
0120 Financial managers			32	57	4
0136 Human resources managers			44	66	1
0150 Purchasing managers			37	51	1
0230 Education administrators			38	65	9
0430 Miscellaneous managers, including funeral service managers a			33	42	2
2100 Lawyers, and judges, magistrates, and other judicial workers			20	38	1
North Carolina		70	Raw Statistics (%)		
Census Codes used for RRA			Minority	Female	Value
0020 General and operations managers			17	28	1
0120 Financial managers			18	56	4
0136 Human resources managers			26	59	1
0150 Purchasing managers			16	44	1
0230 Education administrators			29	68	9
0430 Miscellaneous managers, including funeral service managers a			18	34	2
2100 Lawyers, and judges, magistrates, and other judicial workers			13	32	1

RRA = Reasonable Recruitment Area

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>1 - Executive/Administrative/Managerial</i>					
	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
<b>Final Statistics for External Availability</b>	18	54	95	17	52
<b>Factor 2: Internal Availability</b>					
Source Description	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
3 - Professional Non-Faculty	6	71	1		
	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
<b>Final Statistics for Internal Availability</b>	6	71	5	0	4

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 3 - Professional Non-Faculty

Factor	Description	<u>Raw Statistics</u>			<u>Weighted Factor</u>		Source of Statistics	Reason for Weighting
		Minority	Female	Weight	Minority	Female		
<b>1</b>	The percentage of minorities or women with requisite skills in the RRA. The RRA is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.	5	53	85	4	45	2010 Census EEO Special File for appropriate Occupational Titles. See supporting documents.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>2</b>	The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees that, with reasonably provided training, become qualified during the AAP year.	18	80	15	3	12	Incumbent work force for those Job Groups that constitute "feeders" to this Job Group.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>Job Group Size: 34</b>		<b>100</b>						
		<b>Final Availability (%)</b>			<b>7</b>	<b>57</b>		



# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 3 - Professional Non-Faculty

### Factor 1: External Availability

#### External Availability from the RRA

Census Areas for RRA		Value	Raw Statistics (%)		
West Virginia		1	Minority	Female	Value
Census Codes used for RRA					
0100	Administrative services managers		9	20	3
0110	Computer and information systems managers		9	36	3
0230	Education administrators		5	56	5
0420	Social and community service managers		10	61	1
0430	Miscellaneous managers, including funeral service managers a		6	33	1
0630	Human resources workers		2	68	1
0640	Compensation, benefits, and job analysis specialists		3	88	1
0740	Business operations specialists, all other		1	59	11
0800	Accountants and auditors		7	60	2
0820	Budget analysts		7	79	1
0840	Financial analysts		0	69	1
1105	Network and computer systems administrators		14	16	1
2550	Other education, training, and library workers		9	61	3

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<i>3 - Professional Non-Faculty</i>					
	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
<b>Final Statistics for External Availability</b>	5	53	85	4	45
<b>Factor 2: Internal Availability</b>					
Source Description	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
3 - Professional Non-Faculty	6	71	1		
4 - Clerical and Secretarial	33	100	1		
5 - Technical and Paraprofessional	15	69	1		
<b>Final Statistics for Internal Availability</b>	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
	18	80	15	3	12

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 4 - Clerical and Secretarial

Factor	Description	<u>Raw Statistics</u>			<u>Weighted Factor</u>		Source of Statistics	Reason for Weighting
		Minority	Female	Weight	Minority	Female		
<b>1</b>	The percentage of minorities or women with requisite skills in the RRA. The RRA is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.	8	93	70	6	65	2010 Census EEO Special File for appropriate Occupational Titles. See supporting documents.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>2</b>	The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees that, with reasonably provided training, become qualified during the AAP year.	33	100	30	10	30	Incumbent work force for those Job Groups that constitute "feeders" to this Job Group.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>Job Group Size: 3</b>		<b>100</b>						
		<b>Final Availability (%)</b>			<b>16</b>	<b>95</b>		

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 4 - Clerical and Secretarial

### Factor 1: External Availability

#### External Availability from the RRA

Census Areas for RRA		Value			
Charleston WV		54			
Census Codes used for RRA	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
5120 Bookkeeping, accounting, and auditing clerks	8	87	1		
5700 Secretaries and administrative assistants	8	95	2		
<b>Final Statistics for External Availability</b>			<b>8</b>	<b>93</b>	<b>70</b>

### Factor 2: Internal Availability

Source Description	Raw Statistics (%)			Weighted Factor (%)	
	Minority	Female	Value	Minority	Female
4 - Clerical and Secretarial	33	100	1		
<b>Final Statistics for Internal Availability</b>			<b>33</b>	<b>100</b>	<b>30</b>

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 5 - Technical and Paraprofessional

Factor	Description	<u>Raw Statistics</u>			<u>Weighted Factor</u>		Source of Statistics	Reason for Weighting
		Minority	Female	Weight	Minority	Female		
<b>1</b>	The percentage of minorities or women with requisite skills in the RRA. The RRA is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question.	7	61	70	5	43	2010 Census EEO Special File for appropriate Occupational Titles. See supporting documents.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>2</b>	The percentage of minorities or women among those promotable, transferable, and trainable within the contractor's organization. Trainable refers to those employees that, with reasonably provided training, become qualified during the AAP year.	24	85	30	7	25	Incumbent work force for those Job Groups that constitute "feeders" to this Job Group.	Reasonable recruiting practices and business necessity. Consideration given to past practices and current demands.
<b>Job Group Size: 13</b>		<b>100</b>						
		<b>Final Availability (%)</b>			<b>12</b>	<b>68</b>		

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

## 5 - Technical and Paraprofessional

### Factor 1: External Availability

#### External Availability from the RRA

Census Areas for RRA		Value				
Charleston WV		54				
Census Codes used for RRA		Raw Statistics (%)				
		Minority	Female	Value		
0740 Business operations specialists, all other		0	68	2		
1010 Computer programmers		10	42	1		
1020 Software developers, applications and systems software		10	25	2		
1107 Computer occupations, all other		11	30	2		
2550 Other education, training, and library workers		0	60	1		
5700 Secretaries and administrative assistants		8	95	3		
5860 Office clerks, general		5	87	1		
5940 Miscellaneous office and administrative support workers, inc		3	78	1		
		Raw Statistics (%)			Weighted Factor (%)	
		Minority	Female	Value	Minority	Female
<b>Final Statistics for External Availability</b>		<b>7</b>	<b>61</b>	<b>70</b>	<b>5</b>	<b>43</b>

### Factor 2: Internal Availability

Source Description		Raw Statistics (%)		
		Minority	Female	Value
4 - Clerical and Secretarial		33	100	1

RRA = Reasonable Recruitment Area

# Availability Analysis

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

<b>5 - Technical and Paraprofessional</b>					
5 - Technical and Paraprofessional	15	69	1		
	<b>Raw Statistics (%)</b>			<b>Weighted Factor (%)</b>	
	<b>Minority</b>	<b>Female</b>	<b>Value</b>	<b>Minority</b>	<b>Female</b>
<b>Final Statistics for Internal Availability</b>	<b>24</b>	<b>85</b>	<b>30</b>	<b>7</b>	<b>25</b>

## Placement Goals

Contractors and subcontractors must compare the percentage of minorities and women in each job group with the availability for those job groups as calculated in this AAP. 41 C.F.R. § 60-2.13 to 60.2.15. When the percentage of minorities or women in a job group is less than would be reasonably expected given their availability, contractors are required to establish placement goals, which also serve as reasonably attainable objectives to measure progress toward achieving equal employment opportunity. 41 C.F.R. § 60-2.16.

Contractors may use a number of methods to determine whether their actual employment percentage of minorities and/or females is lower than would reasonably be expected, including the need to set a placement goal when: 1) there is “any difference” between the availability percentage and the employment percentage; 2) actual employment is less than 80 percent of calculated availability (which is the expected representation); or, 3) the difference between the actual and expected employment is statistically significant. Any reasonable method, as long as it is uniformly applied, is acceptable to the OFCCP.

**Placement goals** are established as a percentage equal to the calculated availability and serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. 41 C.F.R. § 60-2.16. **Although a contractor is required to make good faith efforts to meet its goals, the goals are not allowed under law to be quotas (with the exception of a few circumstances, such as when there is a court order to remedy prior unlawful discrimination.)**



# Placement Goals

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

Job Group	Group Size	Employment (%)		Availability (%)		Placement Goals* Needed		Annual Goal (%)	
		Minority	Female	Minority	Female	Minority	Female	Minority	Female
1 - Executive/Administrative/Managerial	19	5	58	17	55	No <sup>1</sup>	No <sup>1</sup>		
3 - Professional Non-Faculty	34	6	71	7	57	No <sup>1</sup>	No <sup>1</sup>		
4 - Clerical and Secretarial	3	33	100	16	95	No <sup>1</sup>	No <sup>1</sup>		
5 - Technical and Paraprofessional	13	15	69	12	68	No <sup>1</sup>	No <sup>1</sup>		

1 - Binomial Distribution

\*The establishment of a "Placement Goal" does not amount to an admission of impermissible conduct. It is neither a finding of lawful discrimination nor a finding of a lack of a good faith affirmative action efforts. Nor does the establishment of a Placement Goal permit unlawful discrimination. Rather the establishment of a "Placement Goal" is a technical targeting term used exclusively by affirmative action planners who seek to apply good faith efforts to increase in the future the percentage employment of minorities and women in the workforce.

## **Progress Toward Goals Report**

Contractors and subcontractors must maintain its current affirmative action plan (AAP) and documentation of good faith efforts, and must preserve its AAP and documentation of good faith efforts for the immediately preceding AAP year. 41 C.F.R. § 60-1.12 (b).

One of the key components to the effective implementation of an AAP is the acknowledgement of progress toward the goals established in the utilization analysis of the preceding year. As such, this is one of the items requested by OFCCP during a routine compliance evaluation.

To compare progress toward goals, the contractor must measure the employment activity that has occurred during the plan year. The variable here is opportunities which are defined by OFCCP as total placements (hires plus promotions) into the job group.

# Progress Toward Goals Report

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

Job Group	Prior Year - 2019			Prior Year Goals (%)		Number of Opportunities (#)			Actual Placement		Goal Met?	
	Total	Minority	Female	Minority	Female	Total	Minority	Female	Minority	Female	Minority	Female
									%	%		
1 - Executive/Administrative/Managerial	18	1	12	N/A	N/A	2	1	1	50	50	N/A	N/A
3 - Professional Non-Faculty	34	1	22	N/A	N/A	17	0	15	0	88	N/A	N/A
4 - Clerical and Secretarial	3	1	3	N/A	N/A	0	0	0	--	--	N/A	N/A
5 - Technical and Paraprofessional	11	2	8	N/A	N/A	0	0	0	--	--	N/A	N/A

## **Disparity Analysis**

Contractors and subcontractors are required to include personnel activity (applicant flow, hires, terminations, promotions, and any other personnel actions) to determine whether there are selection disparities. 41 C.F.R. § 60-2.17 (b) (2).

The Disparity Analysis is a tool to measure the statistical relationship between two selected groups. The following report identifies whether the rates of those hired, promoted, or terminated are similar without regard to race or gender.

# Disparity Analysis - Hires

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>1 - Executive/Administrative/Managerial</b>											
<b>Non-Favored vs Favored</b>	<b>Total Hires</b>	<b>Total Apps</b>	<b>Total Unknowns</b>	<b>Non-Favored Hires</b>	<b>Non-Favored Apps</b>	<b>Favored Hires</b>	<b>Favored Apps</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Female vs Male	1	1	0	0	0	1	1	N/A	100.00%	N/A	No
Hispanic vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No
Asian vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No
Am. Indian vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No
Hawaiian vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No
Two or More vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No
White vs Black	1	1	0	0	0 *	1	1	N/A	100.00%	N/A	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

# Disparity Analysis - Hires

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>3 - Professional Non-Faculty</b>											
<b>Non-Favored vs Favored</b>	<b>Total Hires</b>	<b>Total Apps</b>	<b>Total Unknowns</b>	<b>Non-Favored Hires</b>	<b>Non-Favored Apps</b>	<b>Favored Hires</b>	<b>Favored Apps</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Male vs Female	12	12	0	1	1	11	11	100.00%	100.00%	0	No
Black vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No
Hispanic vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No
Asian vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No
Am. Indian vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No
Hawaiian vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No
Two or More vs White	12	12	0	0	0 *	12	12	N/A	100.00%	N/A	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

# Disparity Analysis - Promotions

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>1 - Executive/Administrative/Managerial</b>										
<b>Non-Favored vs Favored</b>	<b>Total Proms</b>	<b>Total Pool</b>	<b>Non-Favored Proms</b>	<b>Non-Favored Pool</b>	<b>Favored Proms</b>	<b>Favored Pool</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Male vs Female	1	18	0	6	1	12	0.00%	8.33%	0.73	No
Black vs White	1	18	0	1	1	17	0.00%	5.88%	0.25	No
Hispanic vs White	1	17	0	0 *	1	17	N/A	5.88%	N/A	No
Asian vs White	1	17	0	0 *	1	17	N/A	5.88%	N/A	No
Am. Indian vs White	1	17	0	0 *	1	17	N/A	5.88%	N/A	No
Hawaiian vs White	1	17	0	0 *	1	17	N/A	5.88%	N/A	No
Two or More vs White	1	17	0	0 *	1	17	N/A	5.88%	N/A	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

Promotions identified from the job group

The pool consists of those employees present in the job group on 05/01/2019

# Disparity Analysis - Promotions

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>3 - Professional Non-Faculty</b>										
<b>Non-Favored vs Favored</b>	<b>Total Proms</b>	<b>Total Pool</b>	<b>Non-Favored Proms</b>	<b>Non-Favored Pool</b>	<b>Favored Proms</b>	<b>Favored Pool</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Male vs Female	5	34	1	12	4	22	8.33%	18.18%	0.77	No
Black vs White	5	34	0	1	5	33	0.00%	15.15%	0.42	No
Hispanic vs White	5	33	0	0 *	5	33	N/A	15.15%	N/A	No
Asian vs White	5	33	0	0 *	5	33	N/A	15.15%	N/A	No
Am. Indian vs White	5	33	0	0 *	5	33	N/A	15.15%	N/A	No
Hawaiian vs White	5	33	0	0 *	5	33	N/A	15.15%	N/A	No
Two or More vs White	5	33	0	0 *	5	33	N/A	15.15%	N/A	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

Promotions identified from the job group

The pool consists of those employees present in the job group on 05/01/2019



# Disparity Analysis - Terminations

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>1 - Executive/Administrative/Managerial</b>										
<b>Non-Favored vs Favored</b>	<b>Total Terms</b>	<b>Total Pool</b>	<b>Non-Favored Terms</b>	<b>Non-Favored Pool</b>	<b>Favored Terms</b>	<b>Favored Pool</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Female vs Male	3	18	3	12	0	6	25.00%	0.00%	1.34	No
Hispanic vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Asian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Am. Indian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Hawaiian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Two or More vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
White vs Black	3	18	3	17	0	1	17.65%	0.00%	0.46	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

The pool consists of those employees present in the job group on 05/01/2019

# Disparity Analysis - Terminations

Date Range: May 1, 2019 through April 30, 2020

West Virginia Higher Education Policy Commission

<b>3 - Professional Non-Faculty</b>										
<b>Non-Favored vs Favored</b>	<b>Total Terms</b>	<b>Total Pool</b>	<b>Non-Favored Terms</b>	<b>Non-Favored Pool</b>	<b>Favored Terms</b>	<b>Favored Pool</b>	<b>Non-Favored Selection Rate (%)</b>	<b>Favored Selection Rate (%)</b>	<b>Standard Deviation</b>	<b>Disparity</b>
Female vs Male	7	34	5	22	2	12	22.73%	16.67%	0.42	No
Hispanic vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Asian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Am. Indian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Hawaiian vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
Two or More vs Black	0	1	0	0 *	0	1	N/A	0.00%	N/A	No
White vs Black	7	34	7	33	0	1	21.21%	0.00%	0.52	No

Standard Deviation will trigger a flag when the result is larger than two standard deviations.

\* This group does not constitute at least 2% of the total pool.

The pool consists of those employees present in the job group on 05/01/2019



West Virginia Higher Education Policy Commission  
West Virginia Community and Technical College System



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## **Affirmative Action Program for Protected Veterans**

**West Virginia Higher Education Policy Commission**  
**West Virginia Council for Community and Technical College**  
**Education**

**Affirmative Action Program**  
**For Protected Veterans**

**May 1, 2020 through April 30, 2021**  
**Plan Year**

## CONFIDENTIAL, TRADE SECRET, AND PRIVATE MATERIAL

For the purposes of this report, the term West Virginia Higher Education Policy Commission includes any of its divisions or subsidiaries. This Affirmative Action Plan contains confidential, trade secret, commercial, and private information of WVHEPC which is protected from disclosure by the Office of Federal Contract Compliance Programs pursuant to the Trade Secrets Act, 18 U.S.C. § 1905. The release of this information could cause substantial harm to WVHEPC or its employees within the meaning of the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 (b)(3), (4), and (6) and the Trade Secrets Act. FOIA protects information in this document from mandatory disclosure to FOIA requestors. See, e.g., *Chrysler v. Brown*, 441 U.S. 281 (1979). Furthermore, release of any trade secret, confidential statistical or commercial information would be arbitrary and capricious in violation of the Administrative Procedure Act. See, e.g., *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1144 (D.C. Cir.), cert. denied, 485 U.S. 977 (1988).

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**AFFIRMATIVE ACTION PROGRAM  
FOR PROTECTED VETERANS**

**May 1, 2020 through April 30, 2021  
Plan Year**

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## **Introduction**

West Virginia Higher Education Policy Commission (WVHEPC) sets forth this affirmative action program (“AAP”) for the year from May 1, 2020 through April 30, 2021, reaffirming its commitment to the spirit and letter of affirmative action law. Through the implementation of this plan WVHEPC continues its efforts to comply with appropriate government regulations and to make the best possible use of personnel while contributing to the betterment of society and the community.

In developing this AAP, WVHEPC recognizes its duty to ensure equal employment opportunity. The following statement of policy reinforces that belief.

## **Equal Employment Opportunity Policy Statement**

### **41 C.F.R. § 60-300.44(a)**

In setting forth this plan WVHEPC reaffirms its belief and commitment in equal employment opportunity for all employees and applicants for employment in all terms and conditions of employment. Patricia Humphries, as the EEO Administrator, oversees the plan development, modification, implementation, and reporting requirements and conducts management updates. WVHEPC’s [top U.S. executive, such as its CEO or Chief of its U.S. division of a foreign University] supports WVHEPC’s AAP.

WVHEPC provides for an audit and reporting system regarding WVHEPC’s affirmative action responsibilities under the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (“VEVRAA”) regulations, and assigns overall responsibility for the implementation of affirmative action responsibilities under these regulations.

WVHEPC recruits, hires, trains and promotes persons in all job titles, and ensures that all personnel actions are administered without regard to protected veteran status; and ensures that all employment actions are based only on valid job requirements. WVHEPC’s employees and applicants are not subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

1. filing a complaint with WVHEPC or with Federal, state, or local agencies regarding the status covered under this AAP;
2. assisting or participating in any investigation, compliance review, hearing, or any other activity related to the administration of any Federal, State, or local requiring equal employment opportunity for protected veterans;
3. opposing any act or practice made unlawful by Section 503 or its implementing regulation, or any other Federal, State or local law requiring equal opportunity for protected veterans; or
4. exercising any other right protected by VEVRAA or its implementing regulations.

WVHEPC's full AAP, absent the data metrics required by 41 CFR § 60-300.44(k), is available for inspection upon request at the location and during the hours that are posted at WVHEPC's establishment [or during regular working hours] at WVHEPC's Human Resources Office.

**Definitions.** For the purposes of this AAP, the term "Protected Veteran" shall be defined as follows, according to the VEVRAA regulations:

Active Duty Wartime or Campaign Badge Veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the U. S. Department of Defense.

Armed Forces Service Medal Veteran means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation to which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

Disabled Veteran means:

1. A veteran of the U. S. military, ground, naval, or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or
2. A person who was discharged or released from active duty because of a service-connected disability.

Protected Veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of VEVRAA; specifically, a veteran who may be classified as a "disabled veteran," "recently-separated veteran," "active duty wartime or campaign badge veteran," and/or an "Armed Forces Service Medal Veteran" as defined by this AAP and VEVRAA.

Recently-Separated Veteran means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

Pre-JVA veterans are those who would be protected by 41 C.F.R. Part 250 if it were not rescinded, but would not be protected under 41 C.F.R. Part 300.



## Review of Personnel Processes

### 41 C.F.R. § 300.44(b)

1. WVHEPC ensures its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.
2. WVHEPC also ensures that when a protected veteran is considered for employment opportunities, WVHEPC relies only on that portion of the individual's military record, including his or her discharge papers, relevant to the requirements of the opportunity in issue.
3. WVHEPC ensures that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified.
4. WVHEPC periodically reviews such processes and makes any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes is included in this AAP.
5. WVHEPC designs procedures that facilitate a review of the implementation of this requirement by WVHEPC and the Government. The procedures WVHEPC uses are as follows:
  - a. the application or personnel form of each known applicant who is a protected veteran is annotated to identify each vacancy for which the applicant was considered, and the form will be quickly retrievable for review by the Department of Labor and WVHEPC's personnel officials for use in investigations and internal compliance activities.
  - b. The personnel or application records of each known protected veteran includes (i) the identification of each promotion for which the protected veteran was considered, and (ii) the identification of each training program for which the protected veteran was considered.
  - c. In each case where an employee or applicant who is a protected veteran is rejected for employment, promotion, or training, WVHEPC prepares a statement of the reason as well as a description of the accommodations considered (for a rejected disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, is treated as confidential medical records in accordance with § 60-300.23(d). These materials are available to the applicant or employee concerned upon request.
  - d. Where applicants or employees are selected for hire, promotion, or training and WVHEPC undertakes any accommodation which makes it possible for it to place a disabled veteran on the job, WVHEPC makes a record containing a description of

the accommodation. The record is treated as a confidential medical record in accordance with § 60-300.23(d).

## **Physical and Mental Job Qualifications**

### **41 C.F.R. § 300.23 and 44(c)**

1. WVHEPC adheres to a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position and are consistent with job necessity.
2. Whenever WVHEPC applies physical or mental qualification standards in the selection of applicants of employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. WVHEPC reviews its job descriptions and qualifications to ensure they accurately reflect job duties and responsibilities. The schedule is as follows annually; as new job qualifications are established; and/or, when new equipment is installed.
3. No pre-employment physical examinations or questionnaires are used by WVHEPC prior to a job offer contingent on such examinations and other requirements.
4. WVHEPC may use as a defense to a violation of its obligations in Paragraph 2 above that an individual poses a direct threat to the health or safety of the individual or others in the workplace.
5. When WVHEPC conducts a medical examination or inquiry of a protected veteran it will do so according to the terms and conditions of the VEVRAA and Section 503 regulations, and the results of such an examination or inquiry are kept confidential according to federal regulations, which includes the following exceptions:
  - a. Supervisors and managers may be informed regarding restrictions on the work or duties of the applicant or employee and necessary accommodations;
  - b. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and,
  - c. Government officials engaged in enforcing the laws administered by the OFCCP regarding individuals with disabilities or protected veterans, or enforcing The Americans with Disabilities Act (“ADA”) and The Americans with Disabilities Act Amendment Act of 2008 (“ADAAA”), shall be provided relevant information on request.

## **Reasonable Accommodation**

### **41 C.F.R. § 41 C.F.R. §60-300.44(d)**

1. It is WVHEPC's policy as a matter of nondiscrimination to make reasonable accommodation to the known physical and mental limitations of all otherwise qualified disabled veterans unless it can demonstrate that the accommodation would impose an undue hardship on WVHEPC's business, in accordance with the terms and conditions of Section 503 regulations. Undue hardship will be determined by its definition under applicable regulations under Section 503 including, but not limited to the following: Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in 41 CFR § 741.2 (aa)(2), such as the overall financial resources of the facility and the impact of the accommodation upon the operation of the facility (this is not an all-inclusive list).
2. As a matter of affirmative action, if an employee who is known to be a disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, WVHEPC confidentially notifies the employee of the performance problem and inquires whether the problem is related to the employee's disability.
3. If the employee responds affirmatively, WVHEPC confidentially inquires whether the employee is in need of a reasonable accommodation.

## **Anti-Harassment Procedures**

### **41 C.F.R. § 60-300.44(e)**

WVHEPC has developed and implemented procedures to ensure its employees are not harassed because of their status as a protected veteran.

## External Dissemination of Policy, Outreach, and Positive Recruitment

### 41 C.F.R. § 300.44(f)

1. WVHEPC sends written notification of its policy related to affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.
2. WVHEPC undertakes appropriate outreach and positive recruitment activities such as some of those listed below that are reasonably designed to effectively recruit protected veterans. It is not contemplated that WVHEPC will necessarily undertake all the activities listed below or that its activities will be limited to the items listed below. The scope of WVHEPC's efforts shall depend upon all circumstances, including WVHEPC's size and resources and the extent to which existing employment practices are adequate.
  - a. Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for veterans, in order to fulfill its commitment to provide meaningful employment opportunities for such veterans:
    - i. The Local Veterans' Employment Representative in the local employment service office (i.e. the One-Stop) nearest WVHEPC's establishment;
    - ii. The Department of Veterans Affairs Regional Office nearest WVHEPC's establishment;
    - iii. The veterans' counselors and coordinators ("Vet-Reps") on college campuses;
    - iv. The service officers of the national veterans' groups active in the area of WVHEPC's establishment;
    - v. Local veterans' groups and veterans' service centers near WVHEPC's establishment;
    - vi. The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP; and
    - vii. Any organization listed in the Employer Resources section of the National Resource Directory (<http://www.nationalresourcedirectory.gov/>), or any future service that replaces or complements it.
  - b. WVHEPC also considers taking the actions listed below, as appropriate, to fulfill its commitment to provide meaningful employment opportunities to protected veterans:
    - i. Formal briefing sessions should be held, preferably on WVHEPC's premises, with representatives from recruiting sources.

- ii. WVHEPC's facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the institution's selection process, and recruiting literature are an integral part of the briefing. At any such briefing sessions, the WVHEPC official in charge of its affirmative action program is in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.
  - iii. WVHEPC's recruitment efforts at all educational institutions incorporate special efforts to reach students who are protected veterans.
  - iv. An effort is made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.
  - v. Protected veterans are made available for participation in career days, youth motivation programs, and related activities in their communities.
  - vi. WVHEPC takes any other positive steps it deems necessary to attract qualified protected veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for any of the classifications of protected veterans.
  - vii. WVHEPC, in making hiring decisions, considers applicants who are known protected veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable.
  - viii. WVHEPC considers listing its job openings with the National Resource Directory's Veterans Job Bank, or any future service that replaces or complements it.
3. **Assessment of external outreach and recruitment efforts.** WVHEPC, on an annual basis, reviews the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. WVHEPC documents each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and WVHEPC's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to 41 C.F.R. § 60-300.44(k) for the current year and the two most recent previous years. If WVHEPC concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.
4. **Recordkeeping obligation.** WVHEPC documents all activities it undertakes to comply with the obligations of this section, and retain these documents for a period of three (3) years.

## **Internal Dissemination of Policy**

### **C.F.R. § 60-300.44(g)**

1. WVHEPC recognizes that a strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees.
2. WVHEPC implements and disseminates this policy internally as follows:
  - a. includes it in WVHEPC's policy manual or otherwise make the policy available to employees; and
  - b. if WVHEPC is party to a collective bargaining agreement, it notifies union officials and/or employee representatives to inform them of WVHEPC's policy, and request their cooperation.
3. Further, in order to assure greater employee cooperation and participation in WVHEPC's efforts, WVHEPC has developed the internal procedures listed in this section of the AAP for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. It is not contemplated that WVHEPC's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among WVHEPC's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid WVHEPC in meeting this obligation. WVHEPC additionally considers implementing and disseminating this policy internally as follows:
  - a. Informing all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for protected veterans;
  - b. Publicizing it in WVHEPC's newspaper, magazine, annual report and other media;
  - c. Conducting special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's support for the affirmative action policy;
  - d. Discussing the policy thoroughly in both employee orientation and management training programs; and
  - e. When employees are featured in employee handbooks or similar publications for employees, including disabled veterans.

## **Audit and Reporting System**

### **C.F.R. § 60-300.44(h)**

1. WVHEPC has designed and implemented an audit and reporting system that:
  - a. Measures the effectiveness of WVHEPC's AAP;
  - b. Indicates any need for remedial action;
  - c. Determines the degree to which WVHEPC's objectives have been attained;
  - d. Determines whether known protected veterans have had the opportunity to participate in all of WVHEPC's sponsored educational, training, recreational and social activities;
  - e. Measures WVHEPC's compliance with the AAP's specific obligations; and
  - f. Documents the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records for three years subject to the recordkeeping requirements of § 60-300.80.
2. Where the affirmative action program is found to be deficient, WVHEPC undertakes necessary action to bring the program into compliance.

## **Responsibility for Implementation of the Plan**

### **1. Identification and Responsibilities of EEO/AA Administrator 41 C.F.R. § 60-250.44(i); 41 C.F.R. § 60-300.44(i)**

In furtherance of WVHEPC's commitment to Affirmative Action and Equal Employment Opportunity, overall responsibility for implementing WVHEPC's AAP rests with its EEO/AA Administrator, whose identity should appear on all internal and external communications regarding WVHEPC's AAP. The EEO/AA Administrator shall be given top management support and staff to manage the implementation of this program as it pertains to all applicable laws, orders and regulations, including VEVRAA. Specifically, Patricia Humphries or the designated representative's duties include:

- a. Ensures that WVHEPC lists its job openings in accordance with the requirements of 41 C.F.R. § 300.5.
- b. Ensuring WVHEPC posts in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the OFCCP Director provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as WVHEPC's obligation under the law to take affirmative action to

employ and advance in employment qualified employees and applicants who are protected veterans.

- c. Ensuring WVHEPC's applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair) when an applicant or employee requests the poster in an alternative format, or when WVHEPC knows that an applicant or employee is unable to read the poster because of a disability. WVHEPC may also provide the poster to an applicant or employee who is a disabled veteran in other alternate means, such as on disc or in audio recording, as long as the format provided enables the individual who is a disabled veteran to access the contents of a poster.
- d. Ensuring that, with respect to employees, if any, who do not work at a physical location of WVHEPC, WVHEPC satisfies its posting obligations by posting such notices in an electronic format, provided that WVHEPC provides computers, or access to computers, that can access the electronic posting to such employees, or WVHEPC has actual knowledge that such employees otherwise are able to access the electronically posted notices.
- e. Ensuring electronic notices for employees are posted in a conspicuous location and format on WVHEPC's intranet or sent by electronic mail to employees. An electronic posting is used by WVHEPC to notify job applicants of their rights if WVHEPC utilizes an electronic application process. Such electronic applicant notice are conspicuously stored with, or as part of, the electronic application.
- f. Ensuring that to the extent this requirement is applicable to WVHEPC, WVHEPC notifies labor organizations of its EEO policy as required by 41 C.F.R. § 60-300.44(g).
- g. Ensuring WVHEPC includes the provisions of this clause in every subcontract or purchase order in excess of \$100,000, unless exempted by the rules, regulations, or orders of the Secretary of Labor pursuant to VEVRAA, so that such provisions will be binding upon each subcontractor or vendor, under the terms and conditions of 41 CFR 60-741.5(a).
- h. Ensuring that all solicitations or advertisements for employees placed by or on behalf of WVHEPC, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.
- i. Developing, maintaining and, where appropriate, modifying WVHEPC's AAP for protected veterans, policy statements, personnel policies, internal and external communication techniques including discussions with managers, supervisors and employees to ensure WVHEPC's policies are followed, and monitoring the effectiveness of these actions.
- j. Advising supervisors that they are responsible to prevent harassment of employees due to their status as a protected veteran.



- k. Identifying problem areas with line management in the implementation of the program, and helping management develop solutions to any identifiable problem area.
- l. Designing, implementing and overseeing an audit and reporting system to monitor the progress of the University and the AAP's effectiveness, including auditing the contents of WVHEPC's electronic and hard copy bulletin boards on a regular basis to ensure that compliance information that is posted is up to date.
- m. Serving as liaison between WVHEPC and governmental enforcement agencies, community groups, vocational rehabilitation organizations, and organizations for protected veterans.
- n. Evaluating the effectiveness of WVHEPC's plan on a regular basis, and reporting to management.
- o. Monitoring policies and procedures including the selection, evaluation, promotion and training process with regard to the various terms and conditions of employment to attempt to ensure compliance with affirmative action obligations.
- p. Assisting in ensuring that WVHEPC has processes and procedures: a) to ensure career counseling for employees who are protected veterans, when requested and appropriate; and, b) to review personnel actions, policies, procedures, and employee and applicants' qualifications to ensure protected veterans are treated in accordance with anti-discrimination laws when hiring, promotion, transfer, and termination actions occur.
- q. Keeping management up to date on the latest developments in the areas of EEO and affirmative action.
- r. Assisting in the investigation, handling and disposition of employee discrimination and harassment complaints.
- s. Conducting periodic reviews of offices to ensure compliance in the areas of proper display of posters and notices, and opportunity for participation in University-sponsored recreational, educational and social activities.
- t. Overseeing and ensuring that the below self-identification procedures are conducted as set forth in the VEVRAA regulations, using the language and manner prescribed by the OFCCP Director and published on the OFCCP Web site, as follows:
  - i. Pre-offer self-identification invitation procedures for WVHEPC's job applicants as set forth in 41 C.F.R. § 60-300.42 (a); and
  - ii. Post-offer identification procedures for WVHEPC's job applicants as set forth in 41 C.F.R. § 60-300.42 (a).

Further, WVHEPC does not compel or coerce an individual to self-identify as a protected veteran. WVHEPC keeps all information on self-identification confidential, and maintains it in a data analysis file (rather than in the medical files of individual employees) as set forth in 41 C.F.R. § 60-741.23(d). WVHEPC only uses the self-identification information may be used only in accordance with the VEVRAA regulations.

- u. Ensuring that WVHEPC complies with its obligations under 41 C.F.R. § 60-300.45, which requires that WVHEPC establish benchmarks, the purpose of which is to create a quantifiable method by which WVHEPC can measure its progress toward achieving equal employment opportunity for protected veterans. The benchmarks will be set on an annual basis by using one of two mechanisms described in this AAP, and will be documented also as set forth in this AAP.
- v. If an applicant identifies himself or herself as a disabled veteran in the post-offer self-identification detailed in Paragraph 20 above, WVHEPC inquires of the applicant whether an accommodation is necessary, and, if so, engages with the applicant regarding reasonable accommodation. WVHEPC may make such inquiries to the extent they are consistent with the Americans with Disabilities Act. WVHEPC maintains a separate file in accordance with Section 60-300.23(d) on persons who have self-identified as disabled veterans.

**2. Management Responsibilities**  
**41 C.F.R. § 60-300.44(i)**

Line and upper management are advised of their responsibilities for WVHEPC's AAP regarding protected veterans within his or her area of responsibility, including but not limited to their obligations to:

- a. Review WVHEPC's AAP for protected veterans with subordinate managers and supervisors to ensure they are aware of the policy, understand their obligation to comply with it in all personnel actions and understand the need for support at all levels.
- b. Assist in the auditing of plan progress, identification of problem areas, formulation of solutions, establishment of departmental goals and objectives, and development of training programs, when appropriate.
- c. Review the qualifications of applicants and employees in their area of responsibility to ensure protected veterans are treated in a nondiscriminatory manner when hire, promotion, transfer, and termination actions occur; and
- d. Review employees' performance to ensure that illegal discrimination regarding protected veterans does not occur.
- e. Make available career counseling to employees who are protected veterans, when so requested, and as appropriate.
- f. Review position descriptions to see that they adequately reflect the job to be performed.
- g. Audit training programs, hiring, and promotion patterns.
- h. Assist subordinates and upper management in the prevention of harassment.

- i. Show support for this AAP.

### **Affirmative Action Training**

#### **41 C.F.R. § 60-300.44(j)**

WVHEPC provides training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary and other related processes to ensure that its AAP commitments are implemented.

## **ASSESSMENT OF EXTERNAL OUTREACH AND RECRUITMENT EFFORTS**

**Assessment:** WVHEPC evaluated the effectiveness of outreach and recruitment efforts for qualified veterans during its prior AAP year. During that period, of the applicants who chose to complete the self-identification form, 0.00% self-identified as a protected veteran. As a result, WVHEPC will continue to review and analyze its existing outreach efforts and commit to continue to identify viable partners throughout the year.

## **DATA COLLECTION ANALYSIS 41 C.F.R. § 60-300.44(k)**

WVHEPC documents the following computations or comparisons pertaining to applicants and hires on an annual basis and maintains them for a period of three (3) years:

1. The number of applicants who self-identified as protected veterans pursuant to § 60-300.42(a), or who are otherwise known as protected veterans;
2. The total number of job openings and total number of jobs filled;
3. The total number of applicants for all jobs;
4. The number of protected veteran applicants hired; and
5. The total number of applicants hired.

**See Protected Veterans Three Year Data Collection**

# Protected Veterans Three Year Data Collection

West Virginia Higher Education Policy Commission

Required Data	May 1, 2017 through April 30, 2018	May 1, 2018 through April 30, 2019	May 1, 2019 through April 30, 2020
Number of applicants who self-identify as protected veterans pre-offer	0	0	0
Total number of job openings	13	11	19
Total number of jobs filled	13	11	19
Total number of applicants for all jobs	117	4	13
Total number of protected veteran applicants hired	0	0	0
Total number of applicants hired	9	4	13

## **BENCHMARKS FOR HIRING 41 C.F.R. § 60-300.45**

**Benchmark:** The purpose of establishing benchmarks is to create a quantifiable method by which WVHEPC can measure its progress toward achieving equal employment opportunity for protected veterans.

The benchmark is not a rigid and inflexible quota which must be met, nor is it considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

Hiring benchmarks are set by WVHEPC on an annual basis. WVHEPC documents the hiring benchmark it has established each year. WVHEPC retains these records for a period of three (3) years.

**The current benchmark for protected veterans for this location is set at 5.7%, which matches the national protected veteran benchmark.**

### **Protected Veteran Hiring Ratio**

Total Hires	<b>13</b>
Total Protected Veteran Hires	<b>0</b>
Percentage of Protected Veterans Hires	<b>0%</b>

**This location will continue to implement additional recruitment efforts to attract qualified applicants, including protected veterans, for all job openings.**





West Virginia Higher Education Policy Commission  
West Virginia Community and Technical College System

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*Chancellor*

## **Affirmative Action Program for Individuals with Disabilities**

**West Virginia Higher Education Policy Commission**

**West Virginia Council for Community and Technical College  
Education**

**Affirmative Action Program  
for  
Individuals with Disabilities**

**May 1, 2020 through April 30, 2021  
Plan Year**

## **CONFIDENTIAL, TRADE SECRET, AND PRIVATE MATERIAL**

For the purposes of this report, the term West Virginia Higher Education Policy Commission (WVHEPC) includes any of its divisions or subsidiaries. This Affirmative Action Plan contains confidential, trade secret, commercial, and private information of WVHEPC, which is protected from disclosure by the Office of Federal Contract Compliance Programs pursuant to the Trade Secrets Act, 18 U.S.C. § 1905. The release of this information could cause substantial harm to WVHEPC or its employees within the meaning of the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 (b)(3), (4), and (6) and the Trade Secrets Act. FOIA protects information in this document from mandatory disclosure to FOIA requestors. See, e.g., *Chrysler v. Brown*, 441 U.S. 281 (1979). Furthermore, release of any trade secret, confidential statistical or commercial information would be arbitrary and capricious in violation of the Administrative Procedure Act. See, e.g., *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1144 (D.C. Cir.), cert. denied, 485 U.S. 977 (1988).

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**AFFIRMATIVE ACTION PROGRAM  
FOR  
INDIVIDUALS WITH DISABILITIES**

**May 1, 2020 through April 30, 2021  
Plan Year**

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## **Introduction**

West Virginia Higher Education Policy Commission (WVHEPC) sets forth this Affirmative Action Program (“AAP”) for the year from May 1, 2020 through April 30, 2021, reaffirming its commitment to the spirit and letter of affirmative action law. Through the implementation of this plan WVHEPC continues its efforts to comply with Section 503 of the Rehabilitation Act of 1973 (“Section 503”) and its implementing regulations, as amended, and to make the best possible use of personnel while contributing to the betterment of society and the community.

In developing this plan, WVHEPC recognizes its duty to ensure equal employment opportunity for, and to prevent discrimination against, individuals with disabilities. The following statement of policy reinforces that belief.

### **Equal Employment Opportunity Policy Statement 41 C.F.R. § 60-741.44(a)**

In setting forth this plan WVHEPC reaffirms its belief and commitment in equal employment opportunity for all employees and applicants for employment in all terms and conditions of employment. Patricia Humphries, as the EEO Administrator, oversees the plan development, modification, implementation, and reporting requirements and conducts management updates.

WVHEPC provides for an audit and reporting system regarding WVHEPC’s affirmative action responsibilities under Section 503 regulations, and assigns overall responsibility for the implementation of affirmative action responsibilities under these regulations.

WVHEPC recruits, hires, trains and promotes persons in all job titles, and ensures that all personnel actions are administered without regard to disability; and ensures that all employment actions are based only on valid job requirements. WVHEPC’s employees and applicants are not subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

1. filing a complaint with WVHEPC or with Federal, state, or local agencies regarding the status covered under this AAP;
2. assisting or participating in any investigation, compliance review, hearing, or any other activity related to the administration of any Federal, State, or local requiring equal employment opportunity for individuals with disabilities;
3. opposing any act or practice made unlawful by Section 503 or its implementing regulation, or any other Federal, State or local law requiring equal opportunity for individuals with disabilities; or
4. exercising any other right protected by section 503 or its implementing regulations in this part.

WVHEPC’s full AAP, absent the data metrics required by 41 CFR § 60-741.44(k), shall be available for inspection upon request at the location and during regular working hours at WVHEPC’s Human Resources Office.

## **Review of Personnel Processes 41 C.F.R. § 741.44(b)**

1. WVHEPC ensures its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.
2. WVHEPC also ensures its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to jobs for which they are qualified.
3. WVHEPC also ensures its applicants and employees with disabilities have equal access to its personnel processes, including those implemented through information and communications technologies.
4. WVHEPC provides necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes. WVHEPC periodically reviews such processes and makes any necessary modifications to ensure that these obligations are carried out. WVHEPC designs procedures that facilitate a review of the implementation of this requirement by WVHEPC and the Government. A description of the review and any necessary modifications to personnel processes or development of new processes are included in this AAP, and are as follows:
  - a. The application or personnel form of each known applicant who is an individual with a disability is annotated to identify each vacancy for which the applicant was considered, and the form is quickly retrievable for review by the Department of Labor and WVHEPC's personnel officials for use in investigations and internal compliance activities.
  - b. The personnel or application record of each known individual with a disability includes: (i) the identification of each promotion for which the individual with a disability was considered, and (ii) the identification of each training program for which the individual with a disability was considered.
  - c. In each case where an employee or applicant who is an individual with a disability is rejected for employment, promotion, or training, WVHEPC prepares a statement of the reason as well as a description of the accommodations considered. The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, are treated as confidential medical records in accordance with 41 C.F.R. § 60-741.23(d). These materials are available to the applicant or employee concerned upon request.
  - d. Where applicants or employees are selected for hire, promotion, or training and WVHEPC undertakes any accommodation which makes it possible for him or her to place an individual with a disability on the job, WVHEPC makes a record containing a description of the accommodation. The record

is treated as a confidential medical record in accordance with § 60-741.23(d).

### **Review of Physical and Mental Job Qualifications 41 C.F.R. § 60-741.44(c)**

1. WVHEPC has the following schedule for its review of physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified people with disabilities, such qualifications are job-related for the position in question and consistent with business necessity, and adheres to this schedule. The schedule is as follows annually; as new job qualifications are established; and/or, when new equipment is installed.
2. Whenever WVHEPC applies physical or mental qualification standards in the selection of applicants or employees for employment or other changes in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified individuals on the basis of disability, the standards are related to the specific job or jobs for which the individual is being considered and consistent with business necessity.
3. WVHEPC may use as a defense to a violation of its obligations in Paragraph 2 above that an individual poses a direct threat to the health or safety of the individual or others in the workplace.
4. No pre-employment physical examinations or questionnaires are used by WVHEPC prior to a job offer contingent on such examinations and other requirements.
5. When WVHEPC conducts a medical examination or inquiry of a person with a disability, it will do so according to the terms and conditions of the Federal Regulations implementing Section 503, and the results of such an examination or inquiry are kept confidential according to Federal regulations, which includes the following exceptions:
  - a. Supervisors and managers may be informed regarding restrictions on the work or duties of the applicant or employee and necessary accommodations;
  - b. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and,
  - c. Government officials engaged in enforcing the laws administered by the OFCCP regarding individuals with disabilities, or enforcing The Americans with Disabilities Act (“the ADA”) and The Americans with Disabilities Act Amendment Act of 2008 (“the ADAAA”), shall be provided relevant information on request.

## **Reasonable Accommodation to Physical and Mental Limitations 41 C.F.R. § 60-741.44(d)**

1. It is WVHEPC's policy, as a matter of nondiscrimination, to make reasonable accommodation to the known physical and mental limitations of all otherwise qualified individuals with a disability, unless WVHEPC can demonstrate that the accommodation would impose an undue hardship on WVHEPC's business. Undue hardship will be determined by its definition under applicable regulations under Section 503 including, but not limited to the following: Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in 41 CFR § 741.2 (aa)(2), such as the overall financial resources of the facility and the impact of the accommodation upon the operation of the facility (this is not an all-inclusive list).
2. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, WVHEPC shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, WVHEPC shall confidentially inquire whether the employee is in need of a reasonable accommodation.

## **Anti-Harassment Procedures 41 C.F.R. § 60-741.44(e)**

WVHEPC has developed and implemented procedures to ensure that its employees are not harassed on the basis of disability.

## **External Dissemination of Policy, Outreach, and Positive Recruitment 41 C.F.R. § 60-741.44(f)**

1. WVHEPC undertakes appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities. It is not contemplated that WVHEPC will necessarily undertake all the activities listed in Paragraph (f)(2) of this section or that its activities will be limited to those listed. The scope of WVHEPC's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.
2. Examples of outreach and recruitment activities. Below are examples of outreach and positive recruitment activities referred to in Paragraph 1 of this section conducted by WVHEPC, including: [list the activities conducted by WVHEPC]
  - a. Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for individuals with disabilities, in order to fulfill its commitment to provide equal employment opportunity for such individuals:



- i. the State Vocational Rehabilitation Service Agency (“SVRA”), State mental health agency, or State developmental disability agency in the area of the contractor's establishment;
  - ii. the Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;
  - iii. the Department of Veterans Affairs Regional Office nearest WVHEPC’s establishment ([www.va.gov](http://www.va.gov));
  - iv. entities funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) ([www.earnworks.com](http://www.earnworks.com));
  - v. local Employment Network (“EN”) organizations (other than WVHEPC, if WVHEPC is an EN) listed in the Social Security Administration's Ticket to Work Employment Network Directory ([www.yourtickettowork.com/endir](http://www.yourtickettowork.com/endir));
  - vi. local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;
  - vii. placement or career offices of educational institutions that specialize in the placement of individuals with disabilities; and
  - viii. private recruitment sources, such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities.
- b. In addition, WVHEPC has considered taking the actions listed below to fulfill its commitment to provide equal employment opportunities to individuals with disabilities. It is not contemplated that WVHEPC will necessarily undertake all of the activities listed below.
- i. Formal briefing sessions held, preferably on WVHEPC’s premises, with representatives from recruiting sources. WVHEPC’s facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of WVHEPC’s selection process, and recruiting literature are an integral part of any such briefing. At any such briefing sessions, WVHEPC’s official in charge of WVHEPC’s AAP should be in attendance when possible. Formal arrangements are made for referral of applicants, follow up with sources, and feedback on disposition of applicants, from any such briefings.

- ii. WVHEPC's recruitment efforts at all educational institutions incorporate special efforts to reach students who are individuals with disabilities.
  - iii. WVHEPC makes an effort to participate in work-study programs for students, trainees, or interns with disabilities in programs found through outreach, such as to State and local schools and universities, and through EARN.
  - iv. Individuals with disabilities may be made available for participation in WVHEPC's career days, youth motivation programs, and related activities in WVHEPC's communities.
  - v. WVHEPC takes any other positive steps it deems necessary to attract individuals with disabilities not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These individuals may be located through State and local agencies supported by the U.S. Department of Education's Rehabilitation Services Administration (RSA) (<http://rsa.ed.gov/>), local Ticket-to-Work Employment Networks, or local chapters of groups or organizations that provide services for individuals with disabilities.
  - vi. WVHEPC, in making hiring decisions, considers applicants who are known to have disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable.
3. Assessment of external outreach and recruitment efforts. WVHEPC on an annual basis, reviews the outreach and recruitment efforts it has taken over the previous twelve months to evaluate its effectiveness in identifying and recruiting qualified individuals with disabilities. WVHEPC documents each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and WVHEPC's conclusion as to whether each effort was effective. Among these criteria shall be the data WVHEPC collected pursuant to 41 C.F.R. § 741.44(k) for the current year and the two most recent previous years. If WVHEPC concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it identifies and implements alternative efforts listed in Paragraph 3 above in order to fulfill its obligations.
4. WVHEPC sends written notification of its policy relating to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.
5. WVHEPC documents all activities it undertakes to comply with the obligations of this section, and retains these documents for a period of three (3) years.

## **Internal Dissemination of Policy 41 C.F.R. § 60-741.44(g)**

1. WVHEPC recognizes that even a strong outreach program for individuals with disabilities may be ineffective without adequate internal support from its supervisors and employees. Therefore, to ensure greater employee cooperation and participation in WVHEPC's efforts regarding its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities, WVHEPC has developed the following internal procedures. These procedures have been designed to foster understanding, acceptance and support among WVHEPC's executive, management, supervisory, and other employees to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.
2. WVHEPC implements and disseminates this policy internally as follows:
  - a. includes the policy in WVHEPC's policy manual or otherwise makes the policy available to employees; and
  - b. where WVHEPC is a party to a collective bargaining agreement, it notifies union officials and/or employee representatives of the contractor's policy and request their cooperation;
3. Below are some of the other methods WVHEPC may additionally use to implement and disseminate this policy internally:
  - a. informs all employees and prospective employees of WVHEPC's commitment to engage in affirmative action to increase employment opportunities for individuals with disabilities;
  - b. periodically schedules special meetings with all employees to discuss the policy and explain individual employee responsibilities;
  - c. publicizes the policy in WVHEPC's newspaper, magazine, annual report and other media;
  - d. conducts special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation making clear WVHEPC's chief executive officer's support for the affirmative action policy;
  - e. discusses the policy thoroughly in both employee orientation and management training meetings;
  - f. includes articles on accomplishments of individuals with disabilities in WVHEPC's publications; and
  - g. when employees are featured in employee handbooks and similar publications, includes individuals with disabilities.

## **Audit and Reporting System 41 C.F.R. § 60-741.44(h)**

WVHEPC has designed and has implemented an audit and reporting systems that:

1. Measures the effectiveness of WVHEPC's affirmative action program.
2. Indicates any need for remedial action.
3. Determines the degree to which WVHEPC's affirmative action objectives have been attained.
4. Determines whether known individuals with disabilities have had the opportunity to participate in all WVHEPC sponsored-educational, training, recreational and social activities.
5. Measures WVHEPC's compliance with the AAP's specific obligations.
6. Documents the actions taken to comply with the obligations of Paragraphs (1) through (5) of this section, and retain these documents as employment records for a period of three years from the date of making of the record.
7. Where WVHEPC, upon its review, finds its AAP to be deficient and need further progress, WVHEPC undertakes necessary action to bring the program into compliance.

## **Responsibility for Implementation of the Plan 41 C.F.R. § 60-741.44(i)**

### **1. Identification and Responsibilities of the EEO/AA Administrator. 41 C.F.R. § 60-741.44(i)**

In furtherance of WVHEPC's commitment to Affirmative Action and Equal Employment Opportunity, overall responsibility for implementing WVHEPC's AAP rests with its EEO/AA Administrator, whose identity appears on all internal and external communications regarding WVHEPC's AAP. The EEO/AA Administrator has been given the necessary senior management support and staff to manage the implementation of this AAP. Specifically, Patricia Humphries or the designated representative's duties include the following, all of which are administered in accordance with the Section 503 regulations:

- a. Ensuring WVHEPC posts in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the OFCCP Director provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as WVHEPC's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.
- b. Ensuring WVHEPC's applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair) when an applicant or employee requests the poster in an alternative format, or when WVHEPC knows that an applicant or employee is unable to read the poster because of a disability. WVHEPC may also provide the poster to an applicant or employee with a disability in

- other alternate means, such as on disc or in audio recording, as long as the format provided enables the individual with a disability to access the contents of a poster.
- c. Ensuring that, with respect to employees, if any, who do not work at a physical location of WVHEPC, WVHEPC satisfies its posting obligations by posting such notices in an electronic format, provided that WVHEPC provides computers, or access to computers, that can access the electronic posting to such employees, or WVHEPC has actual knowledge that such employees otherwise are able to access the electronically posted notices.
  - d. Ensuring electronic notices for employees are posted in a conspicuous location and format on WVHEPC's intranet or sent by electronic mail to employees. An electronic posting is used by WVHEPC to notify job applicants of their rights if WVHEPC utilizes an electronic application process. Such electronic applicant notice are conspicuously stored with, or as part of, the electronic application.
  - e. Ensuring that to the extent this requirement is applicable to WVHEPC, WVHEPC notifies labor organizations of its EEO policy as required by 41 C.F.R. § 60-300.44(g).
  - f. Ensuring WVHEPC includes the provisions of this clause in every subcontract or purchase order in excess of \$10,000 under the terms and conditions of 41 CFR 60-741.5(a).
  - g. Ensuring that all solicitations or advertisements for employees placed by or on behalf of WVHEPC, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.
  - h. Developing, maintaining and, where appropriate, modifying WVHEPC's AAP for individuals with disabilities, policy statements, personnel policies, internal and external communication techniques including discussions with managers, supervisors and employees to ensure WVHEPC's policies are followed, and monitoring the effectiveness of these actions.
  - i. Advising supervisors that they are responsible for preventing harassment of employees due to their status as individuals with disabilities.
  - j. Ensuring affirmative action training is conducted in accordance with 41 C.F.R. § 60-300.44(g).
  - k. Identifying problem areas with line management in the implementation of the program, and helping management develop solutions to any identifiable problem area.
  - l. Designing, implementing and overseeing an audit and reporting system to monitor the progress of WVHEPC and the AAP's effectiveness, including auditing the contents of WVHEPC's electronic and hard copy bulletin boards on a regular basis to ensure that compliance information that is posted is up to date and accessible to applicants and employees with disabilities.
  - m. Serving as liaison between WVHEPC and governmental enforcement agencies, community groups, vocational rehabilitation organizations, and organizations for individuals with disabilities.

- n. Evaluating the effectiveness of WVHEPC's plan on a regular basis, as described in this AAP, and reporting to management.
- o. Monitoring policies and procedures including the selection, evaluation, promotion and training process with regard to the various terms and conditions of employment to attempt to ensure compliance with affirmative action obligations.
- p. Overseeing WVHEPC's processes and procedures: a) to ensure that career counseling for employees with known disabilities, when requested and appropriate; and, b) to review personnel actions, policies, procedures, and employee and applicants' qualifications to ensure individuals with disabilities are treated in accordance with anti-discrimination laws when hiring, promotion, transfer, and termination actions occur.
- q. Keeping management up to date on the latest developments in the areas of EEO and affirmative action.
- r. Assisting in the investigation, handling and disposition of employee discrimination and harassment complaints.
- s. Conducting periodic reviews of offices to ensure compliance in the areas of proper display of posters and notices, and opportunity for participation in WVHEPC-sponsored recreational, educational and social activities.
- t. Overseeing and ensuring that the below self-identification procedures are conducted as set forth in the Section 503 regulations, using the language and manner prescribed by the OFCCP Director and published on the OFCCP Web site, as follows:
  - i. Pre-offer self-identification invitation procedures for WVHEPC's job applicants as set forth in 41 C.F.R. § 60-741.42 (a);
  - ii. Post-offer identification procedures for WVHEPC's job applicants as set forth in 41 C.F.R. § 60-741.42 (a); and
  - iii. Self-identification invitation procedures for WVHEPC's employees as set forth in 41 C.F.R. § 60-741.42 (a).

Ensuring that WVHEPC does not compel or coerce an individual to self-identify as an individual with a disability, and that WVHEPC keeps all information on self-identification confidential, and maintains it in a data analysis file (rather than in the medical files of individual employees) as set forth in 41 C.F.R. § 60-741.23(d). WVHEPC only uses the self-identification information may be used only in accordance with the Section 503 regulations.

- u. Ensuring that WVHEPC annually evaluates its utilization of individuals with disabilities in each job group, or in its entire workforce in accordance with 41 C.F.R. § 60-741.45, including the following:
  - i. Ensuring that when the percentage of individuals with disabilities in one or more job groups, or in WVHEPC's entire workforce, as applicable, is less than the utilization goal established in the Section 503 regulations, WVHEPC takes steps to determine whether and where impediments to

equal employment opportunity exist. When making this determination, WVHEPC assesses its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audit, and any other areas that might affect the success of its AAP.

- ii. Ensuring that WVHEPC develops and executes action-oriented programs designed to correct any identified problem areas. These action-oriented programs may include the modification of personnel processes to ensure equal employment opportunity for individuals with disabilities, alternative or additional outreach and recruitment efforts from among those listed in 41 CFR § 60-741.44 (f)(1) and (f)(2), and/or other actions designed to correct the identified problem areas and attain the established goal.

## **2. Management Responsibilities 41 C.F.R. § 60-741.44(i)**

Line and upper management are advised of their responsibilities for WVHEPC's AAP regarding individuals with disabilities within his or her area of responsibility, including but not limited to their obligations to:

- a. Review WVHEPC's AAP for individuals with disabilities with subordinate managers and supervisors to ensure they are aware of the policy, understand their obligation to comply with it in all personnel actions and understand the need for support at all levels.
- b. Assist in the auditing of plan progress, identification of problem areas, formulation of solutions, establishment of departmental goals and objectives, and development of training programs, when appropriate.
- c. Review the qualifications of applicants and employees in their area of responsibility to ensure qualified individuals with disabilities are treated in a nondiscriminatory manner when hire, promotion, transfer, and termination actions occur.
- d. Review employees' performance to ensure that illegal discrimination regarding individuals with disabilities does not occur.
- e. Make available career counseling to employees with known disabilities, when so requested, and as appropriate.
- f. Review position descriptions to see that they adequately reflect the job to be performed.
- g. Audit training programs, hiring, and promotion patterns.
- h. Assist employees and other members of management in the prevention of harassment.
- i. If an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, confidentially notify the employee of the

performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, WVHEPC shall confidentially inquire whether the employee is in need of a reasonable accommodation.

- j. Show support for WVHEPC's AAP.

### **Affirmative Action Training 41 C.F.R. § 60-741.44(j)**

WVHEPC provides training and guidance to all personnel who are involved in the recruitment, screening, selection, promotion, disciplinary and other related processes to ensure that its AAP commitments are implemented.



## **ASSESSMENT OF EXTERNAL OUTREACH AND RECRUITMENT EFFORTS**

**Assessment:** WVHEPC evaluated the effectiveness of outreach and recruitment efforts for qualified individuals with disabilities during its prior AAP year. During that period, of the applicants who chose to complete the self-identification form, 0.00% self-identified as an individual with disability. As a result, WVHEPC will continue to review and analyze its existing outreach efforts and commit to continue to identify viable partners throughout the year.

## **DATA COLLECTION ANALYSIS 41 C.F.R. § 60-741.44(k)**

WVHEPC documents the following computations or comparisons pertaining to applicants and hires on an annual basis and maintains them for a period of three years:

1. The number of applicants who self-identified as individuals with disabilities pursuant to § 60-741.42(a), or who are otherwise known to be individuals with disabilities;
2. The total number of job openings and total number of jobs filled;
3. The total number of applicants for all jobs;
4. The number of applicants with disabilities hired; and
5. The total number of applicants hired.

**See Individuals with Disabilities Three Year Data Collection**

# Individuals with Disabilities Three Year Data Collection

West Virginia Higher Education Policy Commission

Required Data	May 1, 2017 through April 30, 2018	May 1, 2018 through April 30, 2019	May 1, 2019 through April 30, 2020
Number of applicants who self-identify as individuals with disabilities pre-offer	0	0	0
Total number of job openings	13	11	19
Total number of jobs filled	13	11	19
Total number of applicants for all jobs	117	4	13
Total number of applicants with disabilities hired	0	0	0
Total number of applicants hired	9	4	13

## UTILIZATION ANALYSIS 41 C.F.R. § 60-741.45

**41 CFR § 60-741.45 Utilization goals.** The utilization goal is not a rigid and inflexible quota which must be met, nor is it considered either a ceiling or a floor for the employment of particular groups. These goals are not quotas.

**Goal:** OFCCP has currently established a utilization goal of 7 percent for employment of qualified individuals with disabilities for WVHEPC's entire workforce as provided in 41 CFR § 60-751.45(d)(2)(i).

**Purpose.** The purpose of the utilization goal is to establish a benchmark against which WVHEPC measures the representation of individuals within WVHEPC's entire workforce as provided in 41 CFR § 60-751.45(d)(2)(i). The utilization goal serves as an equal employment opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of the applicable Section 503 regulations.

### Current Individuals with Disabilities Goal Results

Total Employees	<b>69</b>
Total Individuals with Disabilities	<b>1</b>
Current Individuals with Disabilities %	<b>1.4%</b>

**This location will strive to meet the established goal for individuals with disabilities by implementing additional recruitment efforts to attract qualified applicants for all jobs.**

# Utilization Analysis (Individuals with Disabilities)

Plan Date: 05/01/2020

West Virginia Higher Education Policy Commission

Job Group	Group Size	IWD Employment Count	%	7% Goal Met?	Problem Areas (if any) and Action - Oriented Programs (where utilization goal not met)
1 - Executive/Administrative/Managerial	19	1	5	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
3 - Professional Non-Faculty	34	0	0	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
4 - Clerical and Secretarial	3	0	0	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.
5 - Technical and Paraprofessional	13	0	0	No	Will review outreach and recruitment effort and adjust accordingly to attract more qualified applicants.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**CATASTROPHIC LEAVE PROCEDURES**

**Provisions**

1. A catastrophic illness or injury means an illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee has exhausted all sick and annual leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member as defined in Procedural Rule Series 38, Employee Leave, if this results in the employee being required to take time off from work for an extended period of time to care for the family member and the employee has exhausted all leave and other paid time off.
2. Leave may be donated to any benefits eligible employee experiencing a catastrophic illness or injury. Such leave shall be donated at the request of the employee or employee's designated representative upon appropriate verification that the requesting employee is unable to work due to the catastrophic illness or injury as determined by the Executive Vice Chancellor for Administration or her/his designee.

Upon approval of the transfer of leave by the Executive Vice Chancellor for Administration, any employee may donate sick and annual leave in one-day increments. Donations will be reflected as a day-for-day deduction from the leave balance of the donating employee. No employee shall be compelled to donate leave.

3. An employee receiving the transfer of leave shall have any time which is donated credited to such employee's leave account in one-day increments and reflected as a day-for-day deduction to the leave balance of the donating employee.

Use of donated credits may not exceed the maximum of twelve continuous calendar months for any one catastrophic illness or injury. The total amount of leave donated may not exceed an amount sufficient to insure the continuance of regular compensation and shall not be used to extend insurance coverage. An employee receiving leave donations shall use on a monthly basis any leave personally accrued prior to receiving additional donated leave.

The length of time required for an employee to be on catastrophic leave may be extended with the appropriate verification from the doctor. If additional days of leave are needed from employees, a second request may be sent out.

**Procedures**

1. A benefits eligible employee, unless in a six-month probationary period, experiencing catastrophic illness or injury as defined in the law who wishes to request approval to receive leave donations shall submit such request on the catastrophic leave request form

to the Executive Vice Chancellor for Administration with a copy to the Division of Human Resources.

2. An employee shall submit a request for catastrophic leave on the appropriate form within ten (10) work days of the event which created the catastrophic illness or injury or being notified that her/his combined sick and annual leave balance has been exhausted. A doctor's statement indicating approximate length of time the employee will be required to remain off from work is to be attached to the request form. Any request for catastrophic leave which does not have the appropriate doctor's verification will not be considered.
3. The Executive Vice Chancellor for Administration or her/his designee shall determine whether the request meets all requirements of the policy set forth in Procedural Rule Series 38, Employee Leave and shall advise the employee in writing with a copy to the immediate supervisor and Division of Human Resources regarding action on the request.
4. Any employee who wishes to donate accumulated sick or annual leave to an approved recipient must have a leave balance of at least ten (10) days of combined sick and annual leave before donating leave. Leave donations shall be made on the donation form provided by the Division of Human Resources. Donated leave shall be in one-day increments.

An employee considering donating leave days should understand that he/she may be relinquishing his/her rights to use such leave for personal reasons or at retirement, i.e., for extension of insurance coverage or service credit.

5. The Division of Human Resources will maintain a record of the date that a recipient is approved for catastrophic leave and written donations to the employee are received. Transfers of leave time on a day-for-day basis will then be made in the order written donations are received and for the duration of the time period approved for the recipient.
6. As transfers occur and adjustments are made to the employee's electronic leave record, an e-mail confirmation will be provided to the recipient and donor by the Division of Human Resources.
7. An employee who desires to withdraw donated leave must do so in writing to the Division of Human Resources with the understanding that leave already added to the approved recipient's leave account will not be returned.

June 1993  
Updated: May 17, 2004  
Revised May 5, 2010  
Updated: June 2013

## ***Catastrophic Leave Donation Form***

Donating Employee Name: \_\_\_\_\_

I agree to donate to \_\_\_\_\_:

\_\_\_\_ Sick Leave Days

\_\_\_\_ Annual Leave Days

It is my understanding that these days will not be deducted from my leave balance until used by the receiving employee.\*

**If donating both sick and annual leave, please indicate which type of leave should be utilized first:**

\_\_\_ Sick Leave

\_\_\_ Annual Leave

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

\*\*Leave is used by the receiving employee on a first donated/first used one-day at a time basis as determined by the Division of Human Resources.

Should you desire to withdraw your donation, you must do so in writing to the Division of Human Resources with the understanding that leave already added to the recipient's leave account will not be returned.



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **DISCIPLINARY PROCEDURES FOR CLASSIFIED EMPLOYEES**

Classified employees of the West Virginia Higher Education Policy Commission (Commission) are expected to perform their work-related functions in a professional manner, adhering to commonly accepted standards of conduct. In addition, the classified employee's immediate supervisor will outline specific standards of performance and conduct for each employee. Finally, certain standards of conduct and work-related expectations can be found in the New Employee and Division Handbook and related policies. If an employee fails to observe any of these standards, her/his supervisor will counsel her/him to try to resolve the problem. If counseling is not effective, the employee may receive a series of warning letters, then a period of suspension and, finally, if the conduct does not improve, dismissal. The degree of any disciplinary action is a management function exclusively within the discretion of the supervisor and the Human Resources Division and each case will be considered independently on its own facts and circumstances.

An employee who believes he/she has been disciplined unjustly may use the grievance procedure at West Virginia Code § 6C-2-1 et seq. to present her/his case.

#### **Types of Disciplinary Action**

Disciplinary action, including suspension or dismissal, may be taken whenever an employee's conduct interferes with the operation of her/his unit or brings discredit to the work unit. In general, progressive discipline will follow these steps: verbal warning; written warning; suspension; discharge. The Commission reserves the right to accelerate discipline beyond that in the formal disciplinary progression in the event circumstances justify such a deviation.

#### **Verbal Warning**

A verbal warning will generally be issued when the conduct in question is minor in nature and does not warrant more substantial corrective action. The supervisor will make a written record of the fact of a verbal warning for placement in the employee's personnel file.

#### **Written Warnings**

An employee written warning will generally be issued about her/his performance or conduct when the conduct is more severe than that justifying a verbal warning or when it represents a repeated instance of conduct for which the employee has previously been issued a verbal warning. Written warnings are given to the employee with a copy placed in the employee's personnel file.

## **Suspension**

A supervisor may recommend suspension without pay of a period varying from one to fifteen days, depending on the gravity of the offense and the employee's previous record. A suspension will not be issued without first consulting and obtaining approval from the Chancellor, Executive Vice Chancellor for Administration, Vice Chancellor for Human Resources and the Division Director. Suspension may be applied in cases of first serious offenses or repeated minor ones when, in the judgment of the appropriate Commission staff, proper conduct can be attained without resorting to dismissal.

## **Dismissal**

Immediate dismissal may be appropriate in cases of flagrant or willful violations of rules, regulations, standards of accepted behavior or performance, or for actions where an investigation proves the employee was in clear violation of policy or law.

## **Some Reasons for Dismissal**

The Commission retains the right of dismissal for "just cause." In cases of immediate dismissal, a written statement will be given to the employee and a copy will be included in the employee's record. Just cause includes, but is not limited to, the following:

1. Reporting to work under the influence of alcohol or narcotics or partaking of these substances while at work;
2. Malicious destruction or theft of property of the institution, the Commission, or its visitors, patrons, or employees;
3. Wrongful injury to an employee of the Commission or an employee of an institution;
4. Refusal to comply with institutional rules;
5. Neglect of duty;
6. Dishonesty;
7. Sleeping on duty;
8. Failure to maintain established performance standards;
9. Habitual absence from work without permission or proper explanation;
10. Tardiness;
11. Insubordination; and
12. Any other conduct determined by the Commission to be detrimental to the best interests of the organization.

## **Employee Response to Immediate Dismissal Notification**

An eligible employee may respond to immediate dismissal charges by filing a written request for a hearing through the grievance procedure. He/she may have representation of choice to assist her/him at any such hearing. A request for such a hearing does not cancel the immediate dismissal.

## **Acceleration of Employee Discipline**

The Commission strives to be fair and equitable in administering discipline. Nonetheless, every potential disciplinary episode is individual in nature and the decision as to the appropriate level of discipline will always consider the individual facts of that employee's situation. Nothing in this policy shall limit the capacity of the Commission to respond appropriately and immediately to any potential conduct justifying discipline.

## **Non-Classified Employees**

Non-classified employees serve at the will and pleasure of the Chancellor and may be terminated at anytime for any reason or no reason at all unless the reason is a substantial contravention of public policy.

October 2004  
Updated: May 2013

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **DRESS POLICY**

#### **Procedure Statement**

It is the policy of the West Virginia Higher Education Policy Commission to present a professional business image to the customers we serve. Because every employee does, at one time or another, come in contact with our customers, it is important for all staff members to be dressed appropriately at the office every day.

#### **Implementation of Regular Dress Code**

Division Directors and members of the Chancellors' Cabinet are responsible for interpreting and enforcing the dress and grooming code in their areas of responsibility. This includes counseling employees who are inappropriately dressed. Reasonable accommodations will be made for employees' religious beliefs and medical conditions. A statement from a physician may be required.

The dress should be consistent with the necessity to present a professional business appearance to the public. Questions or complaints that cannot be handled to the employee's satisfaction by her/his supervisor or Division Director should be directed to the Division of Human Resources staff.

The professional, business image the West Virginia Higher Education Policy Commission wants to present to its customers dictates that employees dress in clothing which is appropriate for greeting the public and is functional for performance of the duties of the position. For example, someone whose job involves heavy lifting would not be expected to wear a suit and tie. Acceptable clothing would be slacks, casual shirt, and appropriate shoes for walking and lifting. Exceptions could be made by the Division Director for specific days when physical work is required. Where exceptions are granted, notification to the Executive Vice Chancellor for Administration should be made in advance. In addition to proper dress, employees are expected to present clean, neat, and business-like appearance. Clothing that is described below as being inappropriate for casual dress days is also inappropriate for Monday through Thursday.

#### **Implementation of Casual Dress Code**

The West Virginia Higher Education Policy Commission will observe "dress down day" every Friday. Business or casual dress will be appropriate on these days. The examples which follow are permitted only on dress down days; they would not be acceptable on any other day. Jeans that are not overly worn or faded and without holes, casual shirts, and tennis or other casual shoes. In all cases, clothing is to be clean and in good taste. Items not acceptable would include jogging suits, sweat pants, distracting or revealing clothing, shorts except for dress shorts designed as business wear, midriff tops, cotton/knit tank tops, T-shirts with advertising, pictures, or generally considered to be offensive or inappropriate, torn clothing, or other items deemed unprofessional by the immediate supervisor and/or Division Director.

If an employee is attending a meeting or conference outside of the West Virginia Higher Education

Policy Commission on a Friday, he or she will be expected to dress in attire appropriate for that meeting or conference. If guests are coming to the West Virginia Higher Education Policy Commission for a meeting on a dress down day, staff involved in such a meeting shall wear regular business attire. Further, the Chancellor or the Executive Vice Chancellor for Administration may determine that regular business attire is necessary on a particular Friday.

## **Violations**

In order to implement casual dress procedures, supervisors must first enforce the standard dress code of "proper business attire" on all work days except those indicated for "dress down". Enforcement and violations must also be treated equitably across all divisions by supervisors. Consideration should be given to how violations on a day-to-day basis will be handled. Violations may warrant disciplinary action in accordance with the disciplinary policy contained in the New Employee and Division Handbook. In addition, if the clothing is unduly distracting or unsafe, the employee may be sent home using annual leave or leave without pay to change clothes.

These procedures are general guidelines to follow for dressing in a manner that will maintain the professionalism of the West Virginia Higher Education Policy Commission on Monday through Thursday and provide for a more relaxed atmosphere on Friday. It is up to every individual employed at the West Virginia Higher Education Policy Commission to adhere to this policy as it is written in order to avoid a loss of morale in the office or a loss of the "dress down day" privilege.

Finalized October 14, 1996  
Updated: October 3, 2000  
Updated: May 2013

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **DRUG-FREE WORKPLACE POLICY**

#### **Background**

The United States Drug-Free Workplace Act 1988 (P. L. 100-69, Title V, Subtitle D) requires that all state agencies receiving direct funds from the federal government provide a drug-free workplace.

The agency must provide a drug-awareness program for all employees. All employees must sign the Drug-Free Workplace Statement which indicates that they have seen and will abide by the Drug-Free Workplace Policy. (Form attached)

#### **Purpose**

The Drug-Free Workplace Policy will enable the West Virginia Higher Education Policy Commission to maintain a work environment free of controlled substances and alcohol. Also, it will provide a drug-awareness program which will inform employees of the harmful affects of controlled substances and alcohol.

#### **Procedure**

Statement of Policy Notification:

The West Virginia Higher Education Policy Commission will continuously work to maintain a drug-free workplace. As required by the Drug-Free Workplace Act of 1988, all employees will be informed of and required to sign the Drug-Free Workplace Policy statement.

Awareness:

An awareness program for West Virginia Higher Education Policy Commission employees will be established by the Committee for a Drug-Free Workplace. The Program will provide information on:

- The dangers of drug abuse in the workplace;
- West Virginia Higher Education Policy Commission's policy regarding a drug-free workplace;
- Consequences of violation of the policy; and,
- Availability of assistance programs.

#### **Prohibitions and Sanctions**

The West Virginia Higher Education Policy Commission will take appropriate personnel action in accordance with the disciplinary action policy outlined in the New Employee and Division Handbook. In addition, an employee may be required to participate in a drug or alcohol assistance or rehabilitation program. The disciplinary policy states that "Administrators have the right of dismissal for "just cause". In cases of immediate dismissal, a written statement will be given to the

employee and a copy will be included in the employee's record. Just cause includes but is not limited to the following:

1. Reporting to work under the influence of alcohol or controlled substances or partaking of these substances while at work;
2. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or alcohol are prohibited at the workplace; and,
3. No employee shall report for work or any West Virginia Higher Education Policy Commission project, whether on-site or in the field, while under the influence of controlled substances or alcohol.

The employee shall abide by the terms of this policy statement. The employee shall notify her/his supervisor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

### **Implementation**

The West Virginia Higher Education Policy Commission will:

1. Notify employees in writing of the policy and ask for the verification statement signed and forwarded to the Division of Human Resources;
2. Provide a copy of the policy to each new employee at the time of initial employment processing and have a verification statement signed;
3. Provide a copy of the Policy as part of the award package on all grants received by the West Virginia Higher Education Policy Commission; and,
4. Notify the contracting agency within ten (10) days after receiving notice from an employee or otherwise receiving notice of such conviction.

Effective Date: February 1, 1990

Revised: October 2, 2000

Updated: May 17, 2004

Updated: May 2013

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
DRUG FREE WORKPLACE VERIFICATION STATEMENT

Name: \_\_\_\_\_ SS#: \_\_\_\_\_

Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

Date of Employment: \_\_\_\_\_

As an employee of the West Virginia Higher Education Policy Commission, I agree to abide by the Drug-Free Workplace Policy which states that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance and/or alcohol is prohibited in the workplace. The workplace shall be defined as the buildings and vehicles (personal and state-owned) used for conducting the business of the West Virginia Higher Education Policy Commission. As an employee, I shall not report for work on any West Virginia Higher Education Policy Commission project, whether on-site or in the field, while under the influence of a controlled substance and/or alcohol.

If I am convicted for a violation of any criminal drug statute, I must report the conviction to my supervisor and the Division of Human Resources no later than five (5) days after such conviction.

As of the date indicated, I have read and understand the above statement.

\_\_\_\_\_  
Signature of Employee



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### EDUCATIONAL RELEASE TIME PROCEDURES

The West Virginia Higher Education Policy Commission encourages career development and self-improvement. If eligible, an employee may be allowed time-off during scheduled work hours to attend class, provided the employee's absence will not interfere with her/his unit's operation and is approved by the employee's supervisor and the division head. During emergency or overtime situations, the employee must work as assigned.

#### Definitions

##### A. Eligible Employee

1. Only full-time regular classified and non-classified employees are eligible for time-off to attend classes for job related purposes or pursuing undergraduate, graduate, or doctoral level studies.
2. Under normal circumstances, an employee must have been employed in her/his current position for at least six calendar months prior to the beginning of the semester during which educational release time is sought.
3. An employee may not be in an adjustment, improvement or probationary period while enrolled in classes for which time is requested.
4. Non-exempt employees who take educational release time will not have leave hours counted towards overtime eligibility but will be paid for the hours of leave actually taken.

##### B. Eligible Course Work

1. Classes may be taken at any regionally accredited institution of higher education.
2. Classes should be related to a degree, certification or other well defined program. The class should be related to the employee's current position or upward mobility in the Commission Office.
3. Educational release time will only be granted for classes during regular work hours if the class is not available during evening hours or on Saturday. Employees should indicate in writing that the course is unavailable during evening hours or on Saturday and attach this to their request for educational release time. The immediate supervisor, division director or Executive Vice Chancellor for Administration has the right to request a copy of the class schedule. During emergency or overtime situations, the employee will be expected to work as assigned which may include make-up of the educational release time granted for a particular work week.

## **Requesting Educational Release Time**

Twenty-five (25) working days prior to the beginning of the term in which the class is to be taken, the employee is required to provide her/his immediate supervisor a written request for release time. The West Virginia Higher Education Policy Commission shall provide an application form for release time which contains the following information: the course title; location; credit hours; time of the class; and, the total time absent from the office as required to take the course. The supervisor shall make a recommendation for approval or disapproval of the release time and shall provide to the division head a written statement of such recommendation within five (5) working days of receipt of the request. If the request is recommended for disapproval, a written explanation shall be provided with the recommendation.

The division director shall review the information provided by the employee and the recommendation of the immediate supervisor and shall issue to the requesting employee and immediate supervisor a decision for approval or disapproval with five (5) working days of receiving the supervisor's recommendation. If the request is disapproved, a written explanation shall be provided with the decision. A copy of the form signed by the above three parties shall be forwarded to the Executive Vice Chancellor for Administration and the Division of Human Resources.

Should a dispute arise over the awarding of educational release time, the affected employee may file with the division director, a written request for a review within five (5) working days of receipt of the decision. The division director shall provide any and all necessary documentation to the Executive Vice Chancellor for Administration or her/his designee within five (5) working days of receipt of a request from the Executive Vice Chancellor for Administration or her/his designee for any additional documentation which is deemed necessary for review of the decision. The Executive Vice Chancellor for Administration or her/his designee shall review the request and render a decision within ten (10) working days of receipt of the review request and documentation. The Executive Vice Chancellor for Administration's decision shall be in writing to the employee, supervisor, and division director and shall be binding. An application form and review request form are attached.

## **Recording Educational Release Time**

The Commission Office may limit educational release time to one, three-credit hour course per term. This shall not prohibit any employee from taking additional classes after regular working hours. If an employee takes more than three (3) hours during regular working hours, educational release time would not be granted and the employee would be expected to make up the hours missed should work time be necessary for the additional class. The method to be utilized for making up hours missed for educational purposes will be an agreement between the employee and her/his immediate supervisor. A reasonable amount of travel time may be allowed for classes approved for educational release time.

Upon completion of the class, the employee shall provide the division director and the Executive Vice Chancellor for Administration with evidence of satisfactory completion of the class. The division director will forward evidence of course completion to the immediate supervisor. The

Executive Vice Chancellor for Administration will forward evidence of course completion to the Division of Human Resources for inclusion in the employee's personnel file. Failure to satisfactorily complete a course and/or to notify the Executive Vice Chancellor for Administration may result in denial of future requests for educational release time.

Effective: May 1, 1998

Updated: October 3, 2000

Updated: May 2013

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**EDUCATIONAL RELEASE TIME REQUEST FORM**

Employee Name: \_\_\_\_\_

Immediate Supervisor: \_\_\_\_\_

Class Requested: \_\_\_\_\_

Institution: \_\_\_\_\_

Reason for request (application toward a degree, certification etc.): \_\_\_\_\_

\_\_\_\_\_

Days the class is scheduled: \_\_\_\_\_

Beginning Time (specify hour): \_\_\_\_\_ Ending Time (specify hour): \_\_\_\_\_

Indicate the amount of travel time round trip: \_\_\_\_\_

Term Begins: \_\_\_\_\_ Term Ends: \_\_\_\_\_

Is this course offered after regularly scheduled working hours or on Saturday? Yes\* \_\_\_\_ No \_\_\_\_

**Recommendation**

Supervisor's Recommendation:      Approve \_\_\_\_\_      Disapprove \_\_\_\_\_

Reasons for Recommendation: \_\_\_\_\_

\_\_\_\_\_

**Signatures and Dates**

\_\_\_\_\_  
Requesting Employee      Date: \_\_\_\_\_

\_\_\_\_\_  
Immediate Supervisor      Date: \_\_\_\_\_

\_\_\_\_\_  
Division Director \*\*      Date: \_\_\_\_\_

\* Please refer to Procedure Section B.3

\*\* Copy to be forwarded to Executive Vice Chancellor for Administration and Division of Human Resources.



WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE  
EDUCATION  
**EMERGENCY CONTACT SHEET**

Employee Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Emergency Contact Person(s)  
(Please list in order of notification preference)

1. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (work) \_\_\_\_\_ (home) \_\_\_\_\_

Relationship: \_\_\_\_\_

2. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (work) \_\_\_\_\_ (home) \_\_\_\_\_

Relationship: \_\_\_\_\_

3. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (work) \_\_\_\_\_ (home) \_\_\_\_\_

Relationship: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**West Virginia Higher Education Policy Commission Employee Benefits**

<i>Provider</i>	<i>Benefit</i>	<i>Services</i>
<b>Public Employees Insurance Agency (PEIA)</b>	Health Insurance	Eligible Employees can choose from preferred Provider Benefit (PPB) Plans A, B C, or D. The plans offer hospital, surgical, major medical, prescription drug, other medical care benefit coverage, and retiree health benefits. Plan C is a high-deductible health plan which can be paired with a Health Savings Account (HSA) or a Health Reimbursement Arrangement (HRA). Premiums apply and premium discount programs are available. <b>The Health Plan</b> , is a Health Maintenance Organization (HMO) managed care option, is also available to provide a wide range of comprehensive health services for a fixed periodic payment. Eligible employees may choose from HMO Plans A or B or from Plan C, a Point of Service Plan (POS).
<b>Mountaineer Flexible Benefits (FBMC Benefits Management)</b>	Extended Health Benefits	Mountaineer Flexible Benefits, offered by PEIA, provides pre-tax optional insurance coverage. Benefit choices available include dental, vision, hearing and legal service plans. Legal service plans are post-tax.
	Flexible Spending Accounts (FSA)	A pre-tax Medical Expense FSA is used to pay for eligible medical expenses which are not covered by the other benefit plans. The pre-tax Dependent Care FSA is used to pay for eligible dependent care expenses such as after school care, babysitting fees, daycare services, nursery and preschool.
	Health Savings Accounts (HSA)	A tax-free HSA can be used to pay medical expenses. Money in the account, including interest or investment earnings, accumulates tax-free and, unlike an FSA, it is owned by the employee. Must be enrolled in PEIA Plan C.
	Short/Long Term Disability	The plan provides a pre-tax benefit should an employee become disabled. Rates are determined by salary and age.
<b>Securian (Administered by PEIA)</b>	Life Insurance	Basic Term Insurance is provided to eligible employees by the agency. Schedule of Basic Term Life Insurance: Under age 65 - \$10,000 Age 65-69 - \$6,500 Age 70 and over - \$5,000 Accidental Death and Dismemberment, Optional Term Life, and Dependent Life Insurance are also available.
<b>The Standard</b>	Group Long Term Disability Insurance	The plan provides non-taxable income replacement and contribution to the 401(a) retirement annuity should an employee become disabled. Rates are determined by salary and age.
<b>TIAA (Teachers Insurance and Annuities Association)</b>	Retirement	Employee participation in a tax-sheltered retirement program is mandated by WV State Law. Eligible employees must contribute 6% of their gross pay in the qualified 401(a) plan. Agency matches 6% of the employee's contribution. Voluntary tax deferred Supplemental Retirement Plans (SRA) are also available: 403(b), Roth 403 (b), and 457(b).
<b>Annual/Sick Leave</b>	Vacation/Sick Leave	Employees are eligible to receive up to twenty-four (24) days annual leave per year calculated at the rate of 2.00 days per month. Employees shall accumulate sick leave at the rate of 1.50 days per month and may be accumulated without limit.
<b>Holidays</b>		The agency observes twelve full holidays per year plus any additional days for any statewide, primary or general election.

Revised 3/2021

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### FAMILY AND MEDICAL LEAVE ACT POLICY

#### **Introduction**

The West Virginia Higher Education Policy Commission (Commission) will comply with the Family and Medical Leave Act (FMLA) implementing regulations as revised effective February 2013. The Commission posts the mandatory FMLA Notice and upon hire, provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act in various locations within the offices. The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact the Vice Chancellor for Human Resources in writing.

#### **General Provisions**

Under this policy, the Commission will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

#### **Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked for the Commission for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.



## **Type of Leave Covered**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child or parent with a serious health condition (described below).
4. The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A “serious health condition” is defined as either a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the Commission sick leave policy are encouraged to consult with the Vice Chancellor for Human Resources.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the Commission may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Qualifying Exigency/Military Caregiver leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty. *The conditions applying to FMLA qualifying exigency/military caregiver leave for military personnel and their families are addressed at the end of this policy.*

## **Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (4) above under this policy during any 12-month period. The Commission will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Commission will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (5) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the Commission will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the Commission and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the Commission and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

## **Employee Status and Benefits During Leave**

While an employee is on leave, the Commission will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. Under current Commission policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Division by the 1st day of each month in order for coverage to continue. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee chooses not to return to work at the conclusion of FMLA leave for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the Commission may require the employee to reimburse the Commission the amount it paid for the employee's health insurance premium during the leave period.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments,

the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

### **Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The Commission may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

### **Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave must use all paid annual and sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy. FMLA leave will also run concurrent with any unpaid leave for which the employee may be eligible under the West Virginia Parental Leave Act.

An employee who is using military FMLA leave for a qualifying exigency must use all paid annual leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid annual or sick leave (as long as the reason for the absence is covered by the company's sick leave policy) prior to being eligible for unpaid leave.

### **Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The Commission may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Commission and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. All FMLA leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Commission before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of intermittent or reduced-hour leave is medically necessary.

### **Certification for the Employee's Serious Health Condition**

The Commission will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf>).

The Commission may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The Commission will not use the employee's direct supervisor for this contact. Before the Commission makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the Commission will obtain the employee's permission for clarification of individually identifiable health information.

The Commission has the right to ask for a second opinion if it has reason to doubt the certification. The Commission will pay for the employee to get a certification from a second doctor, which the Commission will select. The Commission may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Commission will require the opinion of a third doctor. The Commission and the employee will mutually select the third doctor, and the Commission will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### **Certification for the Family Member's Serious Health Condition**

The Commission will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf>).

The same conditions/requirements that apply to contacting the employee's health care provider, resolving deficiencies in the medical certification, obtaining second and third opinions and the

release of required medical information will apply with equal force and effect to the certification of a family member's serious health condition.

### **Recertification**

The Commission may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the Commission may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The Commission may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

### **Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Vice Chancellor for Human Resources. Within five business days after the employee has provided this notice, the Vice Chancellor for Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights (<http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf>).

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the Commission's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

### **Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the Vice Chancellor for Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice (<http://www.dol.gov/esa/whd/forms/WH-382.pdf>).

### **Intent to Return to Work From FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave; the Commission may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

### **FMLA Military Qualifying Exigency/Caregiver Leave**

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- (1) short-notice deployment,
  - (2) military events and activities,
  - (3) child care and school activities,
  - (4) financial and legal arrangements,
  - (5) counseling,
  - (6) rest and recuperation,
  - (7) post-deployment activities, and;
  - (8) additional activities that arise out of active duty provided that the employer and employee agree, including agreement on timing and duration of the leave.
- (a) Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.
- (b) In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered service member.
- (1) A "son or daughter of a covered service member" means the covered service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood *in loco parentis*, and who is of any age.
  - (2) A "parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the covered service member. This term does not include parents "in law."
  - (3) Under the FMLA, a "spouse" means a husband or wife as defined under the law in the state where the employee resides.
  - (4) The "next of kin of a covered service member" is the nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood

relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member's next of kin. Alternatively, where a covered service member has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member.

### **Covered Active Duty**

Covered active duty for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.

Covered active duty for members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. (a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and the leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

### **Covered Service Member**

A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

## **Serious Injury or Illness**

In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

## **Certification of Qualifying Exigency for Military Family Leave**

The Commission will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (<http://www.dol.gov/esa/whd/forms/WH-384.pdf>).

## **Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave**

The Commission will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member (<http://www.dol.gov/esa/whd/forms/WH-385.pdf>).

Adopted: November 2013



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### GRIEVANCE PROCEDURES

The following procedures are to govern grievances filed by West Virginia Higher Education Policy Commission employees pursuant to W. Va. Code § 6C-2-1, et seq.

1. An employee wishing to file a grievance pursuant to the provisions of W. Va. Code § 6C-2-1, et seq. shall file, on the form provided by the Grievance Board, their grievance with the Chancellor within 15 days following the event upon which the grievance is based or when the employee became aware of the event. See form and instructions at [https://pegb.wv.gov/forms/Documents/Grievance\\_Form.pdf](https://pegb.wv.gov/forms/Documents/Grievance_Form.pdf)
2. The grievant shall indicate on the form whether the grievant wishes to have a “hearing” or a “conference” or, if applicable, to proceed directly to Level 3 of the grievance process. A grievant may only proceed directly to Level 3 if all parties agree or if the grievant has been discharged, suspended without pay, or demoted or reclassified resulting in a loss of compensation or benefits. The form shall also be filed with the Grievance Board.
3. If a “conference” is requested at Level 1, the Chancellor or his/her designee shall hold the conference within 10 days of receiving the grievance. A conference is a private, informal meeting between the grievant and the Chancellor or the Chancellor’s designee to attempt to resolve the grievance. The Chancellor or his/her designee may permit other employees and witnesses to attend and participate in a conference.
4. If a “hearing” is requested, the Chancellor or his/her designee shall hold the hearing within 15 days of receiving the grievance. A Level 1 hearing is a recorded proceeding in which the parties may be heard and present witnesses and evidence.
5. After the conclusion of the conference or hearing, the Chancellor or his/her designee shall issue a written decision granting or denying the grievance within 15 days.
6. If the grievant is unsatisfied with the decision at Level 1, he or she may file an appeal with the Grievance Board within 10 days of receiving the adverse decision by checking the appropriate box on the Grievance Form and submitting it to the Grievance Board in accordance with its procedures.
7. In calculating “days” in meeting deadlines, Saturdays, Sundays, and holidays shall not be included.
8. The parties may agree to extensions of time at any stage but these must be in writing and signed by all parties to the grievance. A copy of any agreement must be filed with the Division of Human Resources.

9. A grievant has the right to the assistance and presence of a designated representative at every point in the procedure.
10. Failure of a grievant to follow the statutory timelines of W. Va. Code § 6C-2-1, et seq., may result in dismissal of the grievance. Failure of the employer to meet the statutory time lines may result in a default verdict in favor of the grievant.
11. If the Chancellor appoints a designee to conduct a Level 1 conference or hearing, the designee shall render a recommended decision to the Chancellor in ample time for the Chancellor to make a final decision within 15 days of the conclusion of the conference or hearing.
12. Upon request, employees will be further advised about their rights and the procedures under W. Va. Code §6C-2-1, et seq. by the Vice Chancellor for Human Resources. The Division of Human Resources will have the responsibility of attempting to ensure that the timelines are met at all levels of the grievance procedures by all parties involved.

Updated: May 2013  
Revised: April 2020

**GRIEVANCE TIME LINES UNDER  
W. VA. CODE § 6C-2-1**

The following chart outlines the statutory deadlines for both grievants and grievance evaluators in processing grievances under the West Virginia Public Employees Grievance Procedure, W. Va. Code § 6C-2-1, et seq. When calculating the number of “days” for grievance procedure purposes, Saturdays, Sundays, and official holidays are not counted. Also, the day a grievance or appeal is filed, or the day a hearing ends or decision is rendered, is not counted as a “day” for computing the days left till the next action must take place. The intent of the law is that all parties receive complete workdays to accomplish the actions required by them under the statute. Failure to comply with these time limits may mean that a grievance is dismissed or a default judgment is rendered against the employer.

Level One

- |    |   |  |
|----|---|--|
| 1. | Filing of written grievance with chief administrator of agency. Employee must choose between having a “conference” or a “hearing” with the chief administrator. | Within <u>15</u> days of the grievable event.  |
| 2. | If a “conference” is chosen   | Held within <u>10</u> days of receipt of grievance. Notice of a conference to be given at least <u>5</u> days before conference date |
| 3. | If a “hearing” is chosen  | Held within <u>15</u> days of receipt of grievance. Notice of a hearing to be given at least <u>5</u> days before hearing date       |
| 4. | Level one decision issued   | Within <u>15</u> days of conference or hearing   |

Level Two

- |    |   |  |
|----|---|--|
| 1. | Appeal by grievant of level one decision to Grievance Board   | Within <u>10</u> days of receiving adverse decision at level one   |
| 2. | Parties to agree whether matter is mediated by Grievance Board; by private mediation; or by private arbitration | Scheduled within <u>20</u> days of request to mediate              |
| 3. | If Grievance Board mediation chosen   | Report on mediation documented within <u>15</u> days of conclusion |

- |    |                               |  |
|----|-------------------------------|--|
| 4. | If private mediation chosen   | Report on mediation documented within <u>15</u> days of conclusion |
| 5. | If private arbitration chosen | Arbitrator to render decision within <u>30</u> days of conclusion  |

Level Three

- |    |  |  |
|----|--|--|
| 1. | Appeal by grievant for level three hearing | Within <u>10</u> days of receiving written report that level two was unsuccessful in resolving grievance |
|----|--|--|

April 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **HARASSMENT: NONDISCRIMINATION / ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE**

The West Virginia Higher Education Policy Commission is committed to providing a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment. Therefore, the West Virginia Higher Education Policy Commission expects that all relationships among persons in the office will be business-like and free of bias, prejudice, and harassment.

#### **Equal Employment Opportunity**

It is the policy of the West Virginia Higher Education Policy Commission to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, genetic information or any other characteristic protected by law. The West Virginia Higher Education Policy Commission prohibits any such discrimination or harassment.

#### **Retaliation is Prohibited**

The West Virginia Higher Education Policy Commission encourages reporting of all perceived incidents of discrimination or harassment. It is the policy of the West Virginia Higher Education Policy Commission to promptly and thoroughly investigate such reports. The West Virginia Higher Education Policy Commission prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports.

#### **Definitions of Harassment**

- A. Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these

behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature.

- B. Harassment on the basis of any other legally protected characteristic also is strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship, genetic information or any other characteristic protected by law and that:
1. Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
  2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
  3. Otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on company time or using company equipment by email, phone (including voice messages), text messages, social networking sites, etc.

### **Individuals and Conduct Covered**

These policies apply to all job applicants and employees, whether related to conduct engaged in by fellow employees or by someone not directly connected to the West Virginia Higher Education Policy Commission (e.g., an outside vendor, student, consultant or customer). Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

### **Reporting an Incident of Harassment, Discrimination or Retaliation**

The West Virginia Higher Education Policy Commission encourages reporting of all perceived incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe they have been the victim of such conduct should discuss their concerns with their immediate supervisor, any Vice Chancellor, any member of the Human Resources Division or the Chancellor. See the complaint procedure described below.

In addition, the West Virginia Higher Education Policy Commission encourages individuals who believe they are being subjected to such conduct promptly to advise the offender that his or her behavior is unwelcome and request that it be discontinued. Often this action alone will resolve the

problem. The West Virginia Higher Education Policy Commission recognizes, however, that an individual may prefer to pursue the matter through more formal complaint procedures and directly requesting the perceived harasser to stop his or her offensive conduct is not a prerequisite to pursuing a complaint under this policy.

### **Complaint Procedure**

Individuals who believe they have been the victims of conduct prohibited by this policy statement or believe they have witnessed such conduct are encouraged to discuss their concerns with their immediate supervisor or a member of the Human Resources Division. In the event the conduct involves either the immediate supervisor or a member of the Human Resources Division, concerns may be brought directly to the attention of any Vice Chancellor or the Chancellor for appropriate handling.

The West Virginia Higher Education Policy Commission encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. Therefore, while no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment.

The Division of Human Resources will investigate promptly any reported allegations of harassment, discrimination or retaliation. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action measures.

Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action. Acts of retaliation should be reported immediately and will be promptly investigated and addressed by appropriate disciplinary measures, up to and including termination of employment.

Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately. Responsive action may include, for example, training, referral to counseling and/or disciplinary action such as verbal warning, written reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination, as the West Virginia Higher Education Policy Commission believes appropriate under the circumstances. Due to the confidentiality afforded to personnel-related matters, the complaining party may not necessarily be notified what specific corrective measures have been implemented.

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.

### **Conclusion**

The West Virginia Higher Education Policy Commission has developed this policy to ensure that all of its employees can work in an environment free from unlawful harassment, discrimination and retaliation. The West Virginia Higher Education Policy Commission will make every reasonable effort to ensure that all concerned are familiar with these policies and aware that any complaint in violation of such policies will be investigated and resolved appropriately.

Any employee who has any questions or concerns about these policies should talk with the Vice Chancellor for Human Resources.

Finally, these policies should not, and may not, be used as a basis for excluding or separating individuals of a particular gender, or any other protected characteristic, from participating in business or work-related social activities or discussions. In other words, no one should make the mistake of engaging in discrimination or exclusion in order to avoid allegations of harassment. The law and the policies of the West Virginia Higher Education Policy Commission prohibit disparate treatment on the basis of sex or any other protected characteristic, with regard to terms, conditions, privileges and perquisites of employment. The prohibitions against harassment, discrimination and retaliation are intended to complement and further those policies, not to form the basis of an exception to them.

| Updated: May 2013  
Revised April 2020



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### LEAVE REPORTING PROCEDURES

#### **Employee's Responsibilities**

Each employee is responsible for inputting requests for annual, sick, and compensatory leave at least one week before requested leave is to be taken. Leave is not to be taken without receiving electronic approval from the immediate supervisor. In the event that an employee is ill or unable to work, the employee is required to notify her/his supervisor immediately as stated in Series 38, Section 2.9. The sick leave must be input into the leave system upon return to duty. Sick leave for more than five (5) consecutive days shall not be granted without satisfactory proof of illness or injury as evidenced by a statement of the attending physician as stated in Series 38, Section 5.5. The doctor's statement should be delivered to the immediate supervisor who will forward it to the Division of Human Resources.

#### **Supervisor's/Director's Responsibilities**

When possible, leave requests should be approved/denied within one week of request.

It is the responsibility of the immediate supervisor to request a doctor's statement for sick leave of more than five consecutive days. Upon receipt of the statement, the immediate supervisor is to forward the statement to the Division of Human Resources. The doctor's statement will be maintained in the Division of Human Resources for auditing purposes. The immediate supervisor may require evidence from an employee for verification of an illness or other causes for which leave may be granted regardless of the duration of the leave as stated in Series 38, Section 5.6.

A monthly leave report must be printed the first week of each month in order to verify leave taken for each employee for the prior month. This report is to be signed and forwarded to the Division of Human Resources by the second Friday of each month.

It is the responsibility of the supervisor/director to maintain adequate coverage of the division.

#### **General Information**

The electronic leave system does not replace the need for communication between supervisor and employee. Requests will be approved or denied based on needs of the division as stated in Series 38, Section 4.2.

Requests are not approved on a first in/first approved basis. Each supervisor must review each request and make a decision based on the number of requests received for the time period.

Created July 28, 2004  
Updated: May 2013

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### OVERTIME WORK ADMINISTRATIVE PROCEDURES

#### **Introduction**

Federal and State law govern the positions and conditions under which overtime pay must be provided to certain employees who work more than 40 hours in any one workweek. This policy is intended to explain the application of those laws to overtime situations for employees of the West Virginia Higher Education Policy Commission.

This policy has been developed in accordance with West Virginia Code §18B-7-11 and Section 5 of Title 133, Series 38, Procedural Rule, Employee Leave, of the West Virginia Higher Education Policy Commission.

#### **Covered Employees and Hours**

A non-exempt employee is any individual who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An exempt employee is any individual excluded from the overtime provisions of the FLSA. The FLSA further defines these employee classifications based on the duties and responsibilities of the position held by an individual.

Employees eligible to receive overtime compensation are those whose positions are considered non-exempt from the provisions of the federal Fair Labor Standards Act. In no circumstances shall exempt employees be eligible to claim or to receive overtime pay compensation. Overtime eligibility for pay at one and one-half times the employee's normal hourly rate does not begin until a non-exempt employee has worked more than 40 hours in any one workweek. Hours worked between the normal schedule of 37.5 hours/week and 40 hours/week shall be compensated at the employee's normal hourly rate (annual base salary divided by 1,950 hours/year). Any hours worked beyond 40 in any one workweek shall be compensated pursuant to the terms of this policy. A "workweek" is defined as that consecutive seven-day period inclusive of the hours from Sunday at 12:01 a.m. to Saturday at 12:00 midnight. The standard workweek is 37.5 hours with a designated, unpaid lunch period of 1 hour per day.

#### **Procedure**

If it is determined by a supervisor that a non-exempt employee will be required to work more than 37.5 hours in any one workweek, the extra work must be approved in advance by the supervisor or the director of the division and the Executive Vice Chancellor for Administration. In the event the employee anticipates a need to work overtime in any particular workweek, the employee must notify the supervisor of this expectation as soon as possible and receive specific authorization to work any overtime hours. It is the obligation of the supervisor to keep and to maintain accurate records of all hours worked by non-exempt employees. A form is attached which is to be used to record any extra time worked. This form, with the appropriate verification, is to be maintained in the office of the Executive Vice Chancellor for Administration and filed with the Human Resources Office for the employee's personnel file. In most instances, a non-exempt employee will be compensated for hours worked over 40 in any one workweek by receiving compensatory

time at a rate of one and one-half times the employee's normal hourly rate for each overtime hour worked. Hours not worked but for which an employee is paid (e.g., sick leave) are not included as hours worked in the calculation of overtime eligibility.

### **Compensatory Time**

With the consent of the supervisor, an alternative means of compensating an overtime-eligible employee for overtime hours worked is to afford the employee compensatory time (comp time) at an accrual rate of one and one-half hours for each overtime hour worked. The option to take comp time in lieu of overtime pay requires the employee to execute a Compensatory Time Agreement and obtain all necessary approvals in advance of performing the work for which he/she will receive comp time. No employee may accrue comp time in any amount exceeding two hundred forty (240) hours. All comp time must be used within one year of its accrual date.

All comp time accrued may only be scheduled as time off with the approval of the employee's supervisor in the same manner and using the same considerations as those used to schedule annual leave. Provided, however, that when an overtime-eligible employee is required to work on any scheduled day off, that employee at his/her option may receive regular pay for the holiday in addition to pay at the rate of one and one-half times the normal hourly rate times the actual number of hours worked, or the employee may receive regular pay for the holiday in addition to comp time equal to one and one-half times the number of hours actually worked on that day. Provided, further, that all comp time earned under this paragraph must be used within six (6) months of its accrual date.

When an employee who has accrued comp time leaves his/her employment, that employee will be paid for all unused comp time hours at the higher of the following two rates: the average regular rate received by the employee during the first three years of that employee's employment, or; the final regular rate received by the employee.

Exempt employees are not eligible to receive overtime compensation but may accrue comp time when they are required by an immediate supervisor to work on a scheduled day off. In lieu of any additional pay for working the scheduled day off, the exempt employee will be afforded the number of hours actually worked as comp time to be taken off with supervisor approval within the ensuing year. Comp time afforded to exempt employees is not a vested benefit and will be lost if not taken within the year. Exempt employees may not demand overtime compensation in lieu of accrued comp time.

### **Approval**

The Compensatory Time Agreement and Extra Work Hours Approval form is attached which must be completed by the individuals listed, signed, dated and filed with the office of the Executive Vice Chancellor for Administration and the Division of Human Resources.

Adopted: November 6, 1995

Updated: October 3, 2000

Updated: July 27, 2004

Updated: April 2013

Updated: June 10, 2019



## Compensatory Time Request Form

Employee Name: \_\_\_\_\_ Division: \_\_\_\_\_

### Compensatory Time Request

Work Date: \_\_\_\_\_

Total Extra Hours to Work: \_\_\_\_\_

### Employee Agreement

I understand and agree to work beyond forty (40) hours in the work week that includes the above requested date and to accept compensatory time up to a total of 240 hours in lieu of overtime payment. It is my understanding that any accumulated compensatory time will be scheduled off by the Division Director or Unit Head and in accordance with the duties and responsibilities of the unit within one year of accumulation of said compensatory time. It is my understanding that I may, at any time, ask for overtime compensation for accumulated compensatory time.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

### Approvals

\_\_\_\_\_  
Division Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Vice Chancellor for Administration

\_\_\_\_\_  
Date

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### PERFORMANCE APPRAISAL PROCEDURES

#### Purpose

A performance appraisal is a method to assess employee performance in order that each employee may carry out her/his work responsibilities in a successful manner. The purpose of these procedures is to establish a process for managing the performance appraisal system of the West Virginia Higher Education Policy Commission. The process being established provides for the mutual identification of expectations related to the mission of the West Virginia Higher Education Policy Commission.

#### Definitions

- A. Performance Appraisal System: The ongoing process of defining performance expectations, measuring and appraising performance, providing feedback to the employee about performance, and using the performance appraisal information for administrative decisions such as retention, promotion, demotion, dismissal, salary adjustment, merit pay, and other personnel actions.
- B. Employee Enhancement Plan: Plan developed annually with employees to enable them to enhance performance and/or to advance in the career area. This plan is utilized for all employees with an evaluation of 3, 4, or 5.
- C. Developmental Plan: Plan developed jointly by the immediate supervisor and employee to improve the employee's performance of expected actions and working skills. This plan is utilized for employees who receive a 1 or 2 overall evaluation. Employees who receive a development plan will be evaluated quarterly.
- D. Performance Factors: Provide a mechanism for the overall evaluation level of employees. This is derived from a review of Part IV, Expectations; Part V, Supervisory Skills; and, Part VI, Performance Factors & Evaluation. The following overall evaluation categories apply:
  - 1. **Expectations not fulfilled:** This appraisal category indicates that an employee did not successfully complete the required job functions and expectations of the position. Documentation is required to show expectations not met and why. The employee shall have a development plan for charting progress to obtain satisfactory performance. A level 1 would be assigned to this performance level and may lead to progressive disciplinary action up to, and including, termination.
  - 2. **Expectations of position partially fulfilled, needs improvement:** This category indicates that an employee met some, but not all of the required job functions and expectations. Documentation is required to show expectations not met and why. The employee shall have a development plan for charting progress to obtain satisfactory

performance. A level 2 would be assigned to this performance level and may lead to progressive disciplinary action up to, and including, termination.

3. **Expectations of position fulfilled:** This category indicates that an employee has met all the job functions and expectations as outlined in Part IV of the performance appraisal. An enhancement plan related to increasing job skills and proficiency is required with this level. A level 3 would be assigned to this performance level.
  4. **Expectations of position exceeded:** This category indicates that an employee has met the job functions and expectation as outlined in Part IV and exceeded some expectations as reflected by justification. An enhancement plan related to increasing job skills and proficiency is required with this level. A level 4 would be assigned to this performance level.
  5. **Expectations of position far exceeded:** This category indicates an employee has met all job functions and expectations as outlined in Part IV and exceeded in several areas as reflected by justification. An enhancement plan related to increasing job skills and proficiency is required with this level. A level 5 would be assigned to this performance level.
- E. Evaluations in prior periods are not relevant to this year's performance.
- F. Job Function: Duties and responsibilities and agreed to supplemental items as outlined on the position information questionnaire (PIQ) for the position.
- G. Performance Expectations: The definition of the job-related results that the employee is expected to accomplish during the appraisal period. Performance expectations provide specific, quantifiable results, related to essential job functions of the position. The establishment of performance expectations occurs in a conference between the employee and immediate supervisor.
- H. Performance Expectations Conference: A formal, personal meeting between the employee and the immediate supervisor held at the beginning of the appraisal period to establish job functions and expectations. An employee and immediate supervisor may meet as necessary to review and adjust expectations during the appraisal period. Each such meeting is documented by signing a new Part IV which is to be attached to the original performance appraisal form.
- I. Performance Appraisal Review: Description of expectations accomplished during the appraisal period which requires the assignment of a numeric score.
- J. Employee Remarks: Comments regarding her or his appraisal which are written by the employee on the performance appraisal form and may include a copy of the employee's self-evaluation.

- K. Self-Evaluation: Completed by the employee at the end of the appraisal period to reflect her/his accomplishments. The same appraisal criteria the immediate supervisor will utilize for the appraisal are to be utilized by the employee. Self-evaluation forms are due in the Division of Human Resources by March 15. If the supervisor does not complete the appraisal by April 15, the employee's self-evaluation will be considered the final appraisal.
- L. Immediate Supervisor: The person responsible for planning, assigning, and reviewing the work of subordinate employees and the person who is responsible for conducting performance appraisals.
- M. Reviewing Manager: The manager who is responsible for reviewing and signing the performance appraisal of subordinate supervisors.
- N. Probationary Appraisal Period: This is a period of six (6) months beginning with the first day of employment. The probationary period serves as a test of an employee's performance for the position. New employees will receive a written evaluation at the end of three-months and at the end of six-months. Completed and signed appraisal forms are to be forwarded to the Division of Human Resources immediately after completion.
- O. Appointing Authority: The Executive Vice Chancellor for Administration and/or Chancellor who is authorized by statute to appoint classified and non-classified employees.

## **Procedures**

- A. Completed performance appraisals including the employee enhancement plan or improvement plan will be included in the permanent personnel files located in the Division of Human Resources. A copy of the performance appraisals will be located in the Division Director's files and a copy will be provided to the employee. The Division of Human Resources will be responsible for returning copies to the appropriate individuals.
- B. The performance appraisals will be utilized, along with other documents, for administrative decisions such as retention, promotion, demotion, dismissal, merit pay or other personnel actions.
- C. The performance appraisal process is divided into three phases: Performance expectation development; performance monitoring and coaching; and, completion of the performance appraisal document. The process begins April 15 with setting of expectations between the immediate supervisor and employee and is concluded with the submission of all performance appraisal forms to the Executive Vice Chancellor for Administration and/or Chancellor for review by April 15 of the following calendar year and will be forwarded for filing to the Division of Human Resources by April 30 of each appraisal period.
  - 1. Performance planning and communication of expectations:
    - a. The performance expectations must be established by May 1 for the

upcoming appraisal year.

- b. The expectations are derived from the Position Information Questionnaire (PIQ) and the mission and goals of the unit which are based upon the mission and goals of the West Virginia Higher Education Policy Commission.
- c. The performance expectations must focus on significant results rather than general duties and tasks.
- d. The performance expectations should be specific and measurable; be limited in number; and, define standards of performance in terms of quality, quantity, timeliness and cost management.
- e. During the performance appraisal conference, the employee and supervisor should review Part VI, Performance Behaviors, for mutual understanding. The discussion should also include how performance tracking methods will be utilized during the year such as: customer feedback, progress reports, and observations.
- f. The supervisor prepares Part II, type of performance appraisal; Part III, responsibilities; and, Part IV, job functions and expectations of the performance appraisal form. The supervisor and employee meet to discuss expectations. The employee and supervisor each sign and date the bottom of the form containing the job functions and expectations.
- g. The supervisor forwards the form to the next level of supervision (reviewing manager).
- h. The next level of supervision (reviewing manager) should use the information from all of her/his subordinates to ensure that organizational goals are accomplished and to analyze workload distribution. The reviewer signs the form and forwards it to the Division of Human Resources.
- i. Based on information from the reviewing manager, revisions in the expectations may occur with each individual signing and dating that the revisions have been agreed to by all parties. This should occur in a meeting consisting of all parties concerned and requires the completion of Part IV.
- j. Once the reviewer has signed the form, he/she will forward the form and all attachments to the Division of Human Resources.
- k. The Division of Human Resources will file the original in the employee's personnel file and return a copy to the employee and immediate supervisor.

2. Performance monitoring and coaching:



- a. During the year, supervisors should gather information about performance from a variety of sources such as: monthly reports; customer feedback; supervisors; managers; significant incidents which may be both positive and negative; observations; and, discussions with the employee and others.
  - b. In order to provide feedback to the employee on her/his performance, the supervisor or employee may request that a mid-year conference be held. When a mid-year conference is held, the supervisor should also provide coaching, counseling, and mentoring as appropriate. Supervisors are encouraged to meet with employees on an as needed basis during the appraisal period. Each meeting shall be documented and the documentation shall be forwarded to the Division of Human Resources to be attached to the performance appraisal form. Additional conferences to review expectations or to discuss job performance may be held at any time the immediate supervisor, employee and/or reviewing manager feels appropriate. The procedures for any conferences held during the appraisal period are the same as those for the performance planning conference.
  - c. The supervisor is responsible for documenting the employee's performance and the discussions with the employee.
  - d. The employee's self-appraisal is to be a part of the appraisal conference.
3. Completion of the performance appraisal:
- a. At least two weeks before the appraisal conference, the supervisor shall schedule a meeting with each employee under her/his direct supervision. During this period, the employee completes the self-appraisal form and has it ready to discuss when the appraisal conference occurs.
  - b. The supervisor prepares the appraisal form for the employee using the data gathered and documented during the year. The supervisor asks her/his reviewing manager for input regarding the employee and, if necessary, may discuss the draft appraisal with the reviewing manager.
  - c. The supervisor and the employee meet to discuss performance.
    - 1. The supervisor shall allow at least thirty (30) minutes for the discussion.
    - 2. The discussion shall be conducted in private with no interruptions. Telephone calls and visitors should not interrupt the discussions unless an emergency situation arises.

3. The supervisor will review the appraisal and self-appraisal form with the employee.
  4. After reviewing both documents with the employee, the supervisor may add to the appraisal based on comments/suggestions from the employee and/or the employee's self-appraisal.
  5. The supervisor and employee shall discuss areas for employee enhancement. The supervisor will then prepare the employee enhancement plan and include same as part of the expectation setting for the coming appraisal period.
  6. The supervisor and employee shall sign and date the appraisal form.
- d. The appraisal form with attached documentation is forwarded to the next level of supervision (reviewing manager) by April 16.
  - e. All completed performance appraisal forms are to be received by the Division of Human Resources on or before April 30.

Adopted June 2003  
Updated: June 2013

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### PERSONNEL ACTION PROCEDURES

#### **Advertising a Position**

When a vacancy occurs or a new position is created which requires a position to be advertised, a “Request to Advertise” form is to be completed. Prior to advertising an existing vacancy, the immediate supervisor and Division Director shall review the current Position Information Questionnaire (PIQ) for accuracy. If changes are necessary, these are to be made and reviewed by the Vice Chancellor for Human Resources prior to development of the advertisement. If the position is new, a PIQ must be developed and reviewed by the Vice Chancellor for Human Resources Administrator and the Job Classification Committee, if necessary, to determine the appropriate classification of the position. The Request to Advertise form will be sent to the Vice Chancellor for Finance who will verify funding sources and available money. Once the funding source information has been verified, the form will be forwarded to the Executive Vice Chancellor for Administration and the Chancellor(s) for approval. The Request to Advertise form must contain all necessary information and signatures before the Division of Human Resources staff may prepare and place an advertisement for the position.

#### **Advertising Sources**

All position advertisements will be posted on the West Virginia Higher Education Policy Commission website. In addition, the Division Director will indicate on the Request to Advertise form other posting sources for the position. Sufficient information must be provided so that the Division of Human Resources staff can post the position in a timely manner. The Division of Human Resources can provide estimated pricing for various advertising sources and Division Directors should attempt to restrict the scope of advertising to the most relevant recruitment market(s). The Division of Human Resources may also select other advertisers for affirmative action purposes.

#### **Search Committee**

The Division Director shall chair the search committee and shall select other staff members to serve on the committee. Before providing the names on the Request to Advertise form, the Division Director shall contact the individuals to confirm a willingness to be a part of the search process. All search committees shall be comprised of an odd number of members not to exceed five. While not required, it is recommended that a member of the Division of Human Resources staff serve on all search committees for consistency purposes. The Division of Human Resources staff will provide copies of the resumes for candidates who meet the minimum qualifications to committee members. The resumes for those who did not meet the minimum qualifications will be forwarded to the chair of the search committee for review. In addition, the Vice Chancellor for Human Resources will meet with the committee to answer any questions about applicable laws and processes. The search committee will maintain confidentiality throughout the process until an individual has been selected and approved to fill the position.

The Human Resources Representative Senior will work with the chair of the search committee to schedule interviews. Interviewees will be asked to come to the Division of Human Resources the day of the interview to be greeted and escorted to the interview. The interviewee will be introduced to the chair of the search committee who will proceed with the interview process. The Chancellor and Executive Vice Chancellor for Administration are to be afforded the opportunity to meet with the successful candidate once the search committee has made a selection. A decision on the most appropriate candidate for the position is to be made by the Division Director or hiring manager, taking into account the recommendations of the search committee.

### **Processing the Personnel Action Form**

Once the search committee has completed the interviewing process and a selection has been made, a Personnel Action Form (PAF) shall be completed which shall include the correct address, social security number and date of birth and must be signed by the Division Director, the Vice Chancellor for Human Resources, the Vice Chancellor for Finance, the Executive Vice Chancellor for Administration and the Chancellor. The PAF will then be forwarded to the Division of Finance for the preparation of the WV-11. The prepared WV-11 will be sent to the Director of Administrative Services for review and forwarding to the Chancellor or the Executive Vice Chancellor for Administration for signature. The WV-11 will then be submitted to the appropriate state agency for approval and/or further processing. When an approved copy of the WV-11 is received, an appointment letter will be prepared for the Chancellor or the Executive Vice Chancellor for Administration's signature.

### **Resignations/Terminations**

When an employee resigns or is terminated, a Personnel Action Form (PAF) shall be completed indicating whether leave is to be paid out over regular pay periods, in a lump sum, or transferred to a higher education institution or state agency. The original copy of the individual's resignation/termination letter is to be attached to the PAF. The Director of Administrative Services will determine the annual and sick leave balances and print a copy of the web-based leave report on the employee's last day of work. A copy of the report will be attached to the PAF. The Division of Finance staff will process the annual leave balance in accordance with the employee's instructions.

The PAF will be forwarded by the Director of Administrative Services to all necessary parties for signatures and finally to the Division of Finance staff for preparation of the WV-11. Once prepared, the WV-11 will be sent to the Director of Administrative Services for review and forwarding to the Chancellor or the Executive Vice Chancellor for Administration for signature. The WV-11 will then be submitted to the appropriate state agency for approval and/or further processing. Immediately upon receiving notice (verbal or written) of an employee's resignation, the employee's immediate supervisor shall formally (in writing or by e-mail) accept the resignation and forward copies of the resignation and acceptance of resignation to the Chancellor or the Executive Vice Chancellor for Administration for signature.

## **Leave Without Pay**

Leave without pay may occur for personal, medical, family or parental leave purposes. Leave without pay occurs when an employee has exhausted all sick and annual leave in accordance with Series 38, the Commission's rule on employee leave.

Verification that all catastrophic leave, parental leave, accrued sick and annual leave has been exhausted should be verified by the Division of Human Resources staff. A copy of the employee's letter requesting leave without pay shall be attached to the PAF. Once all approving signatures are obtained, the PAF will be forwarded to the Division of Finance for preparation of the WV-11. Once prepared, the WV-11 will be sent to the Director of Administrative Services for review and forwarding to the Chancellor or the Executive Vice Chancellor for Administration for signature. The WV-11 will then be submitted to the appropriate state agency for approval and/or further processing. When the WV-11 has been prepared, a letter outlining the provisions of the leave will be prepared and forwarded to the Chancellor or the Executive Vice Chancellor for Administration for signature.

## **Creation of a New Position**

The creation of a new position will be accomplished by the preparation of the Request to Advertise form as previously described in the procedures for advertising a position. Refer to that section for information related to the preparation of a PIQ.

## **Reclassification/Promotion**

Should a classified employee request reclassification, a revised PIQ must be developed, reviewed and signed by all parties. The Division Director shall forward the signed PIQ to the Vice Chancellor for Human Resources with a request that it be reviewed for possible reclassification/promotion. The Vice Chancellor for Human Resources Administrator will follow the guidelines in Series 53, the Commission's rule on personnel administration, in conducting the review. The results of the PIQ review will be shared with the employee and the Division Director. The appropriate documentation, including a PAF, WV-11, and a letter to the employee, will be prepared.

## **Name/Address Change**

When an employee has a change in name/address, the employee shall send an e-mail to the Division of Human Resources staff. The Human Resources Representative Senior will provide the employee with forms for changing her/his name/address on benefits. The Division of Finance staff will prepare the necessary paperwork to forward to the appropriate state agency.

In the case of a name change, the employee must obtain a new social security card bearing the new name prior to changing their name on the payroll. Failure to obtain the social security card could present future problems with the Social Security Administration. Therefore, a copy of the social security card must be forwarded to the Division of Human Resources prior to the processing of paperwork to change the employee's name.

## **Contracting for Temporary Employment Services**

When the services of a temporary employment agency are needed, the Division Director should forward a memorandum to the Division of Human Resources requesting the services, outlining the duties and qualifications, and how long the services will be needed.

If approval is granted for contracting for such services, the Division Director shall work with the Division of Human Resources staff to finalize the description of duties and qualifications. The Division of Human Resources staff shall forward the requisition, final description of duties and qualifications, to the Purchasing Office. If the service can be provided from the state's or higher education's contracts for temporary employment services, the Purchasing Office will contact the appropriate vendor and issue a purchase order for the service. If requested, two or more persons may be interviewed before the purchase order is processed.

If the service requirements cannot be filled using one of the existing statewide contracts, the Purchasing Office will do the following depending on the circumstances:

1. If the total cost of the services will be \$1,000 or less, an order will be placed with one of the temporary employment agencies.
2. If the total cost of the services will be greater than \$1,000 but not more than \$15,000, the Purchasing Office will use the final description of duties and qualifications to secure quotations from at least three temporary employment service agencies. Unless there is valid reason not to do so, a purchase order will be issued to the vendor offering the best value.
3. If the total cost of the services will exceed \$15,000, the Purchasing Office will use the final description of duties and qualifications to secure competitive sealed bids or proposals from temporary employment service agencies. Unless there is a valid reason not to do so, a purchase order will be issued to the vendor offering the best value.

The Division Director has the option to interview and select the best qualified individual available from the temporary employment agency before a purchase order is processed. The immediate supervisor shall approve the temporary employee's weekly time sheet and forward the "customer copy" to the Division of Human Resources.

The Division of Human Resources shall be notified by the Purchasing Office of the name of the individual selected and the start and end date of the services. Should there be a request for an extension, the Division Director will need to get approval through the Chancellor or the Executive Vice Chancellor for Administration following the same procedures as the original approval.

Adopted: January 4, 1993  
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Revised: May 27, 2009  
Revised: June 8, 2009

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## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### TELECOMMUTING POLICY AND GUIDELINES

#### **Policy Statement**

The West Virginia Higher Education Policy Commission (Commission) affirms its commitment to develop, maintain and support a comprehensive policy of equal opportunity in employment practices. To that end, the Commission will actively support telecommuting and flexible work schedules where it is reasonable and practical to do so and where operational needs will not be adversely affected. The duties and responsibilities of the classified or non-classified position must be suitable for a telecommuting arrangement. Telecommuting is a privilege and not an entitlement of any employee and may be terminated at any time.

Determinations of eligible positions and approvals/denials/rescissions/modifications of individual requests to telecommute will be made without regard to protected characteristics as specified in Commission Rule, *Title 133, Procedural Rule, Series 40 – Equal Opportunity and Affirmative Action*.

#### **Definition of Telecommuting**

Telecommuting is defined as working at home or at another off-site secure location where employees may maintain a consistent electronic link (via mobile phone, internet-based meeting and communications platform, computer, virtual private network, fax, etc.) to the employee's primary work location or principal place of employment. Telecommuting is a cooperative arrangement between the Commission and an employee, based upon the needs of the position, work group, department, and agency. This policy does not apply to situations where a supervisor occasionally allows an employee to work at home on a temporary, as-needed basis.

#### **Goals and Objectives**

The Commission is committed to equal opportunity for staff. To that end, the Commission may create working arrangements, in accordance with managerial interests, whereby it can widen its recruitment pool of prospective candidates and retain the valuable skills of existing employees.

#### **Eligibility**

Employees will be selected to telework based on the suitability of their job responsibilities to the arrangement, an evaluation of the likelihood of their being successful teleworkers, and an evaluation of their supervisors' ability to manage remote workers. Each division director will make his or her own selections about who will be eligible for telecommuting.

To be eligible for consideration for a telecommuting arrangement, an employee must have an up-to-date job description on file in Human Resources and have no record of performance problems or disciplinary actions within the preceding two (2) years. In the case of a new hire, the hiring

supervisor will conduct a thorough reference check with past employers to determine whether the new employee meets the requirements for the telecommuting arrangement. Annual reauthorization of any telecommuting arrangement is dependent upon a positive performance evaluation of the telecommuting employee by his or her supervisor. The Executive Vice Chancellor for Administration shall have final approval of all telecommuting arrangements, and he or she may rescind a telecommuting arrangement upon reasonable notice to the telecommuting employee and his or her supervisor.

Upon acceptance of a telecommuting arrangement, both the employee and his or her manager shall complete a training course designed to prepare them for the teleworking experience. All teleworkers must sign acknowledgment of receipt of the Telecommuting Work Standards/Performance set forth below.

### **Employee Qualities Appropriate for Telecommuting**

An employee is considered a good candidate for telecommuting if his/her essential duties and responsibilities can be performed remotely and if s/he meets the following, non-exclusive criteria:

- a. Self-motivated, proven ability or potential to perform and be highly productive;
- b. In good standing (no disciplinary or corrective actions or warnings);
- c. Comprehensive job knowledge;
- d. Ability to establish clear objectives and work assignments;
- e. Ability to work independently and productively on their own;
- f. Flexible, dependable and trustworthy;
- g. Organized and accountable; and
- h. Have good written and verbal communication skills.

### **Determining Positions Appropriate for Telecommuting**

Supervisors, in consultation with the Division of Human Resources, shall determine positions suitable for telecommuting by analyzing the duties and responsibilities and applying the following criteria:

- a. Positions requiring autonomy where work can be performed with equipment that can be kept securely at the alternate work site;
- b. Clearly defined tasks and objectives;
- c. Work or projects requiring little face-to-face communication or service to the public;



- d. Work or projects requiring high level of concentration; or
- e. Work or projects where the supervisor and employee can establish measurable assignments, tasks, and activities.

### **Procedure**

Employees wishing to telecommute must review the telecommuting policy and work standards, then seek and receive requisite approvals, beginning with the employee's supervisor. Supervisors must review the duties and responsibilities and consult with the Division of Human Resources to ensure that the position is suitable for telecommuting. Prior to approval, the supervisor and employee shall jointly establish tasks, timelines, and due dates for work during the telecommuting period. The supervisor and the employee shall establish a regular schedule of meetings to ensure that the arrangement is working for both the employee and the agency. Additionally, if a hybrid or "fixed-day" telecommuting arrangement is requested or necessary, the supervisor shall establish a regular schedule for in-office and remote location telecommuting. Once approved, the Telecommuting Agreement shall be maintained by the Division of Human Resources.

### **Approvals**

The employee's supervisor and division director must support the telecommuting arrangement and the Executive Vice Chancellor for Administration shall have final approval. If, at any time, the supervisor, division director or Executive Vice Chancellor for Administration determines that an employee's telecommuting arrangement is not working to the benefit of the division, or for the operational good of the agency, the supervisor, division director or Executive Vice Chancellor for Administration may rescind an employee's telecommuting arrangement and require that employee to return to the main office to work.

Any change in the approved job assignment, remote work location or work schedule must be reviewed and approved by the supervisor, division director, and Executive Vice Chancellor for Administration before implementation.

Where possible, supervisors will provide advance notice of rescission or changes to an employee's telecommuting agreement; however, advance notice is not required. **Telecommuting agreements may be rescinded at any time.**

### **Job Responsibilities**

Employee job responsibilities, performance standards, and daily work schedule will be mutually agreed upon by the supervisor and the employee in advance, but in no event shall an employee under a telecommuting arrangement devote less than his/her regularly scheduled working hours to work duties during the course of a workweek. To be clear, the amount of time a full-time employee is expected to work per day (7.5 hours) or per pay period (75 hours) will not change as a result of participation in the telecommuting program.

As with all employees of the Commission, regardless of work location, work schedules must be in compliance with the Fair Labor Standards Act and West Virginia wage and hour law, and under no circumstances shall employees work or accrue overtime without pre-approval from their supervisors. The telecommuting employee shall continue to follow the Commission's standards of professionalism in terms of job responsibilities, work output, professional appearance and customer service. In the event that business conditions require the employee's presence at the central work location during the employee's regularly scheduled workday, the employee shall report to the central work location. The telecommuting employee shall be available for in-person staff meetings or other meetings deemed necessary by his or her supervisor, division director or the Executive Vice Chancellor for Administration.

Telecommuting employees must work a regular, defined schedule agreed upon with their supervisor and should treat their remote work location as an office setting. Telecommuting employees shall be available for interaction with fellow Commission staff and agency constituents during the work day. Telecommuting employees shall adhere to agency guidelines for appropriate work attire when attending virtual meetings or interacting with the public.

### **Supervisor Contact**

Once a telecommuting arrangement has been approved, the employee is responsible for maintaining regular contact with his/her supervisor, and the employee must be available by virtual meeting technology (Zoom, Microsoft Teams, Webex, etc.), telephone and email during core hours. Telecommuting employees will be provided necessary computer hardware, webcams and other equipment to be readily and regularly available for video teleconferences with their supervisors via this technology. The supervisor or designee shall be the employee's primary contact within the central work location. It is expected that the supervisor and the employee will work collaboratively, and the supervisor shall stay apprised of events or information obtained during the working day. The employee shall return calls and e-mail from his or her supervisor within the same business day or no later than 24 hours after receipt thereof. Although it is the responsibility of the telecommuting employee to maintain regular contact with his/her supervisor, it is the responsibility of the supervisor to ensure appropriate oversight of the employee's remotely performed work duties. The degree of appropriate oversight of a telecommuting employee shall be a consideration of the supervisor's performance evaluation.

### **Travel**

When working in an approved telecommuting arrangement, the employee is considered to have two primary work locations *for purposes of travel reimbursement*. In no event shall a telecommuting employee be permitted to claim mileage reimbursement for travel between the alternate work location and the central office. Business-related travel to remote locations that would otherwise be reimbursed from the point of the central office shall be reimbursed from the point of the central office or the alternate work location, whichever is closer to the remote location.

## **Workers' Compensation and Other Liability**

As required by State statutes, the Commission may have workers' compensation liability for the telecommuting employee's job-related injuries and illnesses while performing work functions during regularly scheduled work time in the designated work area of the home.

The Commission assumes no liability for any activity, damage, or injury which is not directly associated with or resulting from the official job duties for which the agency has no ability to exercise control or for injuries occurring in the employee's home workspace outside the agreed-upon work hours, unless the employee was working overtime that had been pre-approved by his or her supervisor.

The Commission assumes no liability for the employee's personal property or for any loss, destruction, or injury that may occur in or to the employee's home or to the designated work area of the home, including any personal injury or property damage to any family members or invitees to the telecommuting employee's home, including the designated work area of the home.

## **Workspace and Office Supplies**

The employee shall designate a workspace within the remote work location for placement and installation of Commission equipment to be used while teleworking.

- a. The designated workspace shall be maintained by the employee in a clean, professional, and safe condition, free from hazards and other dangers to the employee and his or her assigned equipment. The workspace must not contain materials, decorations, images, etc., that would be deemed inappropriate for a professional office setting, as these may be visible during video teleconferences and virtual meetings.
- b. Any Commission materials and equipment taken home by the telecommuting employee shall be kept in the designated work area and not made accessible to others. **Commission equipment and materials located at an alternative work location may not be used for personal activities or by other members of the teleworking employee's household for any purpose.**
- c. As liability may extend to accidents which could occur in the alternative work location, the Commission retains the right to make on-site inspections of this work area, at a mutually agreed upon time, to ensure that safe work conditions exist.
- d. The telecommuting employee shall not remove from the Commission's main office any Commission-owned furniture, such as desks, desk chairs, filing cabinets, bookcases, etc.
- e. The telecommuting employee may take his or her computer, monitors, mice, and related computer peripherals to the approved remote work location after his or her telecommuting arrangement has been approved in accordance with this policy and after the employee's supervisor has made an inventory of the equipment the employee is

taking to the remote work location. The supervisor shall itemize the inventory on a property/equipment loan agreement form for approval. A copy of agreement form shall be sent to the Director of Administrative services for entry in OASIS and to the Commission's Chief Information Technology Officer. The employee shall return any such equipment to the Commission's main office upon request of his or her supervisor, division director or the Executive Vice Chancellor for Administration.

- f. Office supplies will be provided by the Commission as reasonably needed and as approved by the telecommuting employee's supervisor and division director. The Commission will not reimburse the telecommuting employee for out-of-pocket expenses for office supplies or other materials unless such purchase was first approved in writing by the employee's supervisor and division director.

### **Computer Equipment and Software**

- a. Any hardware of software purchased by the Commission remains the property of the Commission and shall be returned to the agency should the alternative work arrangement be terminated or upon request by the employee's supervisor, division director or the Executive Vice Chancellor for Administration.
- b. Software owned by the Commission may not be duplicated except as formally authorized by policy.
- c. Employees using Commission software must adhere to the manufacturer's licensing agreements.
- d. Commission equipment and software located at an alternative work location may not be used for the employee's personal activities or by other members of the teleworking employee's household for any purpose.

### **Compensation, Benefits, Leave and Taxes**

An employee's compensation, benefits, employee status, and work responsibilities shall not change as a result of the telecommuting arrangement.

Telecommuting is not intended to be used as a replacement for sick leave, family medical leave, workers compensation leave or any other type of leave. Teleworking is not a substitute for dependent care. During the telecommuting employee's regularly scheduled workday, he or she will not be available to provide dependent care, unless he or she first takes the appropriate leave.

It shall be the employee's responsibility to determine any income tax implications of maintaining a home office area. The Commission will not provide tax guidance, nor will the Commission assume any additional tax liabilities. Employees are encouraged to consult with a qualified tax professional to discuss income tax implications.

## **Confidential Information**

Restricted access materials (such as payroll, personnel files, financial information or any information deemed by the Commission as confidential) may not be taken out of the office, copied, or compromised in any way. Employees working at alternate sites shall take all precautions necessary to secure sensitive information and prevent unauthorized access to agency records, documents, and information. Violation of this provision of this policy could result in disciplinary action, up to and including termination.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**TELECOMMUTING REQUEST FORM**

Employees who wish to telecommute must complete and submit this form to his/her supervisor for requisite approvals prior to telecommuting. The supervisor agrees to monitor the employee's performance and adhere to established guidelines and work standards.

Employee name (print):	
Position title:	<input type="checkbox"/> Classified / <input type="checkbox"/> Non-classified
Division:	
Primary work physical address:	
Primary work schedule:	
Telecommuting physical address:	<input type="checkbox"/> Home <input type="checkbox"/> Other
Proposed begin date:	Review/Renewal Date:

**Employee Statement.** I hereby request approval to telecommute. I understand that telecommuting is a privilege and not an entitlement and that this agreement may be terminated at any time. I have read and understand the requirements for work standards and performance and agree to adhere to policies. My signature on this application indicates I have read, understand and or agree to the following statements:

1. At the telecommuting workplace, employee's work hours will be from \_\_\_\_\_ to \_\_\_\_\_ on the following days: \_\_\_\_\_ effective: \_\_\_\_\_.
2. I agree to comply with all Commission/Council rules, policies, practices and instructions of the Telecommuting Policy including forwarding the desk phone to a telephone at the telecommuting site or as instructed by IT.
3. I will notify my supervisors immediately of any situations which interfere with my ability to perform my job.
4. I will maintain safe work conditions and practice appropriate safety habits.
5. I certify that the work location is free from hazards.

6. I will notify my supervisors immediately of any injury incurred while working,
7. I agree to allow supervisors to visit the alternate work location immediately after any accident or injury that occurs while working.
8. I agree to use employer-provided supplies only for business purposes.
9. I absolve the Commission/Council from liability for damages to real or personal property resulting from participation in the telecommuting program.
10. I am responsible for the security of information, documents, and records in my possession or used during telecommuting, and I will not take restricted-access material home without the written consent of my supervisor.

*My initial by the following paragraphs, indicates I understand the statement and agree to the stipulations.*

In consultation with Administrative Services and the Commission's information technology director, I am responsible for servicing and maintaining my personal computer equipment and software. The Commission/Council will not be liable for damages to my personal or real property during the course of performance of official duties or while using state equipment in my residence. \_\_\_\_\_

The Commission/Council will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use my residence as a telecommuting work location. \_\_\_\_\_

I may be covered by the provisions of the Commission's Workers Compensation Program if injured while performing official duties at the central workplace or telecommuting workplace. Workers Compensation will not cover non-employees who are injured at the telecommuting site. I agree to certify that the work location is safe and free from hazards.  
\_\_\_\_\_

I agree to bring to the immediate attention of my supervisor any accident or injury occurring at the alternate work location while working. My supervisor will investigate all accident and injury reports immediately following notification. \_\_\_\_\_

I will apply approved safeguards to protect Commission/Council records from unauthorized disclosure or damage and will comply with the privacy requirements set forth in the state law and in Commission/Council policies. \_\_\_\_\_

## Safety Checklist

The following checklist is designed to assess the overall safety of the telecommuting work location. Each applicant is required to read and complete the self-certification Safety Checklist. Upon completion, the checklist should be signed and dated by the participating employee.

Describe in detail the designated work area at the alternate work location. Include information such as the environmental surroundings of the workspace (lighting, desk height, chair height, etc.):

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To the best of my knowledge:

If applicable, are all stairs with four or more steps equipped with handrails?	___ Yes ___ No
Are all circuit breakers and/or fuses in the electrical panel labeled as to intended service?	___ Yes ___ No
Do circuit breakers clearly indicate if they are in the open or closed position?	___ Yes ___ No
Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through walls, exposed wires fixed to the ceiling)?	___ Yes ___ No
Are aisles, doorways, and corners free of obstructions to permit visibility and movement?	___ Yes ___ No
Are file cabinets and storage closets arranged so drawers and doors do not open into walkways?	___ Yes ___ No
Do chairs have any loose casters (wheels)?	___ Yes ___ No
Are the rungs and legs of the chairs sturdy?	___ Yes ___ No
Is the work area overly furnished?	___ Yes ___ No
Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard?	___ Yes ___ No
Is the office space neat, clean and free of excessive amounts of combustibles?	___ Yes ___ No
Are floor surfaces clean, dry and level?	___ Yes ___ No



**INITIATION AND TERMINATION OF AGREEMENT**

Employee agrees to adhere to applicable guidelines and policies.

The Commission/Council concurs with employee participation and agrees to adhere to applicable policies and procedures.

Employee may terminate participation in telecommuting at any time, with two weeks' notice to your immediate supervisor, unless it was a condition of employment.

The Commission/Council may terminate employee's participation in telecommuting at any time. (Employees may be withdrawn for reasons to include, but not limited to, declining performance and organizational benefit). Two weeks' notice to the employee will be provided, when feasible, but is not required.

By signing this application, I, the employee, am applying to participate in the West Virginia Higher Education Policy Commission / Community and Technical College Council Telecommuting Program and do hereby agree to adhere to all applicable current and future guidelines and policies.

Expectations in how routine communication between the employee, supervisor, coworkers, and customers will be handled (as it mentioned in the policy regarding checking voice-mail and email messages, coming in to attend meetings in person, or attend meetings via conference call):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employee Phone: \_\_\_\_\_ Employee Cell: \_\_\_\_\_

Supervisor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**TELECOMMUTING AGREEMENT**

Employee Name:	
Telecommuter Address:	<input type="checkbox"/> Home <input type="checkbox"/> Other
Phone:	Cell Phone:
Telecommuting Begin Date:	
Telecommuting Review Date:	

**Work Standards and Performance**

1. The telecommuter will remain an at-will employee during the term of this 'Agreement, and the Agreement in no way creates either an express or implied employment contract for any particular period.
2. Employee's time and attendance will be recorded the same as performing official duties at the primary workplace.
3. Supervisors will maintain a copy of employee's work schedule, and employee's time and attendance will be recorded the same as if performing official duties at the primary workplace.
4. Employee will meet with the supervisor regularly on an agreed upon schedule to receive assignments and to review completed tasks as necessary or appropriate.
5. The employee's job responsibilities will not change due to the telecommuting arrangement, except as may be specifically outlined and approved in this agreement. Employee will complete all assigned work according to work procedures outlined in the job description for the position held and any procedures mutually agreed upon by the employee and the supervisor, and according to guidelines and expectations stated in the employee's performance plan.
6. Supervisor will evaluate employee's job performance according to the employee's performance plan.
7. Employee shall limit performance of his/her assigned duties to the central workplace or agency-approved alternate work location. Failure to comply with this provision may result in loss of telecommuting privileges and/or disciplinary action.

## Compensation/Benefits

1. Salary, leave accrual rates, and travel entitlements will remain as if the employee performed all work at the central workplace.
2. Employee will be compensated in accordance with applicable state and federal law for overtime work that has been requested by his/her supervisor and approved in advance.
3. Employee understands that overtime work must be approved in advance by the supervisor. By signing this form, employee agrees that failing to obtain proper approval for overtime or compensatory time may result in loss of telecommuting privileges and/or appropriate disciplinary action.
4. Employee shall obtain supervisory approval before taking leave in accordance with established office procedures.
5. Employee shall request and use leave appropriately for any and all hours not worked during his/her regular work schedule.

## Equipment/Expenses

1. Employee who uses Commission equipment agrees to protect such equipment in accordance with agency guidelines. State-owned equipment will be serviced and maintained by the agency.
2. If the employee provides his or her own office-related equipment, s/he is responsible for servicing and maintaining it. **Agency records, as defined in this policy, shall not be stored on an employee's personal equipment. Employees must use agency-issued computer equipment for agency business.**
3. Neither the Commission nor the State will be liable for damages to an employee's personal or real property during the course of performance of official duties or while using State equipment in the employee's residence.
4. The agency is not responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities, internet costs associated with the use of the employee's residence as an alternate location).

## Safety

1. Employee is covered by the appropriate provisions of the State of West Virginia workers' compensation program as outlined in State Code if injured in the course of his or her employment at the primary workplace or alternate work location.
2. By entering into the telecommuting agreement, the employee certifies that the work location is safe and free from hazards.

3. Employee shall bring to the immediate attention of the Division of Human Resources and his/her supervisor any accident or injury occurring at the alternate work location while working, in accordance with the Commission's policy on reporting such accidents or incidents.
4. Supervisor shall investigate all accident and injury reports immediately following notification. The employee shall afford the supervisor or appropriate Commission employee permission to enter his/her alternate work location for purposes of inspecting the premises during the course of an accident/injury investigation. Report of the investigation shall be sent to the Division of Human Resources within one day of the incident.

**Confidentiality/Security**

Employee shall apply approved safeguards to protect agency or State records from unauthorized disclosure or damage, and shall comply with the privacy requirements set forth in the agency's policies and/or State Code.

**Agency Approvals**

The agency supports employee participation, and the supervisor agrees that the employee and the position are suitable for a telecommuting arrangement.

Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Division Director \_\_\_\_\_ Date \_\_\_\_\_

Vice Chancellor for  
Human Resources \_\_\_\_\_ Date \_\_\_\_\_

Executive Vice Chancellor  
for Administration \_\_\_\_\_ Date \_\_\_\_\_

Chancellor \_\_\_\_\_ Date \_\_\_\_\_

October 27, 2020

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**Telecommuting Frequently Asked Questions**

October 27, 2020

**1. Is telecommuting voluntary?**

Yes. Employees who do not wish to telecommute will not be forced to telecommute.

**2. Will I have to give up my physical office space if my request to telecommute is approved?**

Yes. Employees approved for telecommuting will not have an individual office in the Charleston office building. However, mobile office space will be available in each Division for telecommuting employees to be able to come to the office to work. The mobile office space will be managed by the Division head and may, at some time, be occupied by individuals outside of your assigned Division.

**3. I am a new employee of the agency; can I start telecommuting immediately?**

Possibly. The hiring supervisor is responsible for determining whether the new employee holds a position appropriate for a telecommuting arrangement and possesses the qualities outlined in policy to enable the new employee to be approved for a telecommuting arrangement.

**4. Can I appeal my supervisor's denial of my request to telecommute?**

Yes. All requests for telecommuting are reviewed by the Executive Vice Chancellor for Administration. You may appeal the denial of your request to telecommute to the Executive Vice Chancellor for Administration. The Executive Vice Chancellor has final say on all requests to telecommute.

**5. Is telecommuting training available for employees and managers?**

Yes. There is separate training for employee and supervisors. Currently we use the online federal Office of Personnel Management training material for employees and managers. Our IT staff are currently working to set the training up for all employees. You will receive an email with a link when your training is ready. Employees and managers must complete the training in one sitting and print proof of completion for submission to Human Resources.

**6. How often do I meet with my supervisor?**

Telecommuting employees and their supervisors must maintain frequent and regular communications throughout the work week. Employees shall be available for meetings via video teleconference (Teams, Zoom, Skype, etc.) throughout the day, in addition to any scheduled meetings. Supervisors are expected to check in with their employees daily and to conduct periodic evaluations to ensure employees and their supervisors have mutual understanding of expectations and performance.

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**Telecommuting Frequently Asked Questions**

October 27, 2020

**7. What about my office phone? How will that work?**

While we have temporarily been forwarding office phones to employee mobile phones and loaner mobile phones, the agency is working to implement a computer “soft phone” solution. This will enable your agency-issued computer to serve as the office desk phone, so your business calls will be received via your computer while you are logged in from home. Employees who are “on call” will continue to be available via mobile phone, in addition to the software-powered desk phone.

**8. If State offices are closed due to inclement weather or some other emergency, are telecommuting employees excused from work as well?**

No. A telecommuting policy enables a greater number of telework-ready employees to be productive during government closures in response to severe weather, special events and other emergency situations.

**9. Can my schedule be different on my telecommuting workdays?**

Not normally. Employees are expected to be working and available by telephone and email during core hours. However, just as an employee would do when he/she is at the regular worksite, an employee who is telecommuting may request leave for a portion of the day.

Also, temporary schedule adjustments within the workweek may be approved by your supervisor just as they would in the office, for example to work through lunch in order to leave early for a doctor’s appointment or to deal with an auto repair, etc.

**10. What if my electricity or internet is out at my telecommuting location?**

If the telecommuter’s electricity or internet service is interrupted during the work day, the employee should work on an alternative assignment, move to an alternative workplace (there will be office space available at the main office), or use annual leave for any hours they did not work due to the service interruption.

**11. Can I use my own computer?**

No. Any work for the agency must be conducted on agency-owned equipment. It is a violation of the Computer Use Policy to put or store confidential agency records on an employee’s personal computer or equipment.

**12. Who is responsible for maintaining and servicing equipment used at the alternative worksite?**

The agency’s Senior IT Systems Administrator is responsible for computer and systems maintenance. The employee is required to maintain his or her designated workspace, including the agency’s

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**Telecommuting Frequently Asked Questions**

October 27, 2020

equipment, in a clean, professional, and safe condition, free from hazards and other dangers to the employee and his or her assigned equipment.

**13. Can I take home my office furniture, desk chair, filing cabinet or other items from my office?**

No. Only items of a personal nature are permitted to be removed from the office building. It is the employee's responsibility to provide the necessary items to establish a home-based work environment.

**14. Is the agency required to check the safety and security of a home-based telecommute office?**

The Commission reserves the right to make on-site inspections of the telecommuter's remote work area at a mutually agreed upon time. However, it is the employee's responsibility to maintain a clean, safe, and productive home office environment. A safety checklist is included in the request to telecommute which must be signed by the employee. This allows the employee to self-certify the home office is free from hazards. The checklist provides a general description of the agreed upon alternative worksite or designated work area, a self-certifying assessment of its overall safety and if signed, assumes compliance.

**15. Do I have to maintain an actual office at home?**

Not necessarily. Your home office must be a tidy location, free of distractions and away from areas of household activity and noise during the workday. This does not mean you have to designate an actual office in your home, but you do need to create a professional atmosphere that is conducive to agency business.

Your telecommuting workspace must be free of any décor, photographs or other items that would not be appropriate in a traditional office setting, keeping in mind that personal items may be visible during video teleconferences, Zoom, Teams and Skype meetings, etc.

**16. Am I required to dress in work attire when telecommuting?**

Telecommuting employees must dress in appropriate business attire for online meetings, as if they were meeting in person. Employees are expected to be well-groomed and maintain a professional appearance during the workday.

**17. Are business phone calls from my home telephone or personal cell phone reimbursable? What about use of my home Internet connection?**

No.

**18. Does an employee who uses a portion of his/her home for business qualify for any Federal Tax deductions?**

**West Virginia Higher Education Policy Commission  
West Virginia Council for Community and Technical College Education**

**Telecommuting Frequently Asked Questions**

October 27, 2020

Employees are responsible to consult with a tax accountant about any tax deductions or expenses related to a home office. The agency will not provide tax guidance, nor will the agency assume any additional tax liabilities as a result of a telecommuting arrangement.



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### WORK SCHEDULE PROCEDURES

The West Virginia Higher Education Policy Commission (Commission) will generally honor three (3) work schedules for employees. Division Directors are responsible for ensuring adequate coverage throughout the workday and providing recommendations for division schedules to the Chancellor and/or the Executive Vice Chancellor for Administration.

The following assumptions apply to scheduling of staff:

1. Each division will have employees available to answer the telephone and inquiries from 8:00 a.m. to 5:00 p.m. Monday through Friday. Divisions are defined as: Academic Affairs; Administrative Services; Chancellor's Office, Community College Council; Chancellor's Office, Policy Commission; Finance and Facilities; Health Sciences; Human Resources; Legal; Financial Aid; Policy and Planning; Science and Research; and Student Affairs.
2. The core work period will be from 8:00 a.m. to 5:00 p.m.
3. Employees may be considered for schedules which are on either side of the core work period as follows:
  - 7:30 a.m. to 4:00 p.m.
  - 8:00 a.m. to 4:30 p.m.
  - 8:30 a.m. to 5:00 p.m.
4. Employees who wish to adjust their current schedule should provide such request in writing to their immediate supervisor. The immediate supervisor will make recommendations for schedule changes to the Division Director. The Division Director has the authority to approve or change the recommendations of the immediate supervisor. It is the Division Director's responsibility to ensure that the division has appropriate coverage from 8:00 a.m. to 5:00 p.m. Monday through Friday. Special circumstances or projects may justify a deviation(s) from these schedules in appropriate cases. In all cases, however, the work of the West Virginia Higher Education Policy Commission shall take priority over individual employee convenience.
5. Based upon the work requirements of the division and special circumstances, the Division Director may recommend an alternative work schedule for individual employees. Any revision to an employee's work schedule which deviates from the three schedules above, must be approved by the Chancellor or the Executive Vice Chancellor for Administration.
6. All employee schedules will contain 37.5 hours per week between Monday and Friday in addition to the one hour lunch period per day. In order to maintain coverage, Division Directors can schedule alternate lunch hours for staff which should be between the hours of 11:00 a.m. and 2:00 p.m. Nothing in this procedure will prevent employees from providing

Noon to 1:00 p.m. telephone coverage and taking their lunch period from 11:00 a.m. to Noon or 1:00 p.m. to 2:00 p.m. on the day when phone coverage is provided.

7. Should two employees doing basically the same type of work and/or covering the same division request the same schedule, the employee with the most seniority (years of service at the West Virginia Higher Education Policy Commission Office) shall be the first considered for the schedule as requested.
8. Staff will be expected to adhere to their assigned work hours and will be expected to be prepared to begin and end their work day according to their assigned schedule.
9. Alternative work schedules may also be available to qualifying employees seeking accommodations for a disability or for those exercising Family and Medical Leave Act leave.

Revised: May 11, 2009  
Revised: April 23, 2013  
Revised: April 20, 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### COMPUTER USE POLICY

Computer use is an integral part of the West Virginia Higher Education Policy Commission workplace. This heavy reliance on information technology places responsibilities on both the West Virginia Higher Education Policy Commission and all individual employees. By accepting these responsibilities, all members of the West Virginia Higher Education Policy Commission staff ensure that the largest possible benefits are realized from the use of computer resources.

- The West Virginia Higher Education Policy Commission has a responsibility to provide its computer users with their fair share of resources with which to do their jobs, to take steps to protect users' privacy, and to protect the integrity of files stored on network drives.
- Individual employees have responsibilities which include becoming knowledgeable about software use in their work, taking precautions regarding their own privacy and that of others, and protecting their own work by adhering to usage policies, maintaining password security, and backing up important files.
- Some forms of computer use are prohibited in order to promote a productive, safe, and legal work environment.

#### **West Virginia Higher Education Policy Commission Responsibilities**

Within budget and support limitations, the West Virginia Higher Education Policy Commission will make efforts to determine the information technology needs of divisions and employees, and to provide users with a fair share of resources. Providing a fair share of resources to all may require placing limits on the use of shared equipment and discouraging some forms of computer use on the part of employees.

The West Virginia Higher Education Policy Commission makes no guarantee as to the privacy associated with workplace computer usage. Although measures will be maintained to provide individual users with private and protected e-mail accounts and network drives, all hardware and software employed at this office are considered state property. As such, all computer-related activities are subject to state and federal inquiries, including but not limited to the Freedom of Information Act (except as exempted by law), as well as inspection and review by authorized West Virginia Higher Education Policy Commission personnel in the exercise of their oversight responsibilities.

No one can prevent the periodic failure of computer equipment and software, which can result in the loss or corruption of files. To reduce the harmful consequences of such events, regular backups of shared drives will be conducted. These backup measures include weekly full and daily incremental tape backups, and the volume shadow copy service associated with the Windows server operating system. Because backups are not conducted on the local hard drives of individual workstations, this backup protection only extends to files stored on shared network drives.

Although no method is completely effective, the West Virginia Higher Education Policy Commission employs several levels of virus and spam filtering technologies to prevent malicious and unwanted materials from reaching individual computer accounts.

### **Employee Responsibilities**

All employees are subject to state and federal regulations and guidelines related to the protection of private and sensitive information stored on the office network as well as individual computer drives. This information includes but is not limited to private student information. Employees must take measures to protect this information by never transmitting it via unsecured/unencrypted methods and by employing individual security measures such as maintaining password integrity and logging out from unused computers.

Employees shall not give their network login password to anyone else, and will periodically change their passwords when called upon to do so. Employees shall leave their computers running at all times to ensure all machines receive periodic security and software updates. All employees shall log out of the network at the end of the workday, or when leaving their workstation for an extended period of time.

Proper precautions against viruses must be taken by all employees. Employees are expected to use good judgment in handling unexpected or suspicious e-mail messages. Information Technology staff must be notified of all viruses detected on individual West Virginia Higher Education Policy Commission computers. It is a violation of this policy for any employee to attempt to subvert or deactivate any existing virus protection or spam filters.

Computer files are at constant risk from virus corruption, disk failure, and accidental erasure or overwrites. These risks can be reduced, but never eliminated. All employees have the responsibility to guard against the consequences of file loss by following a regular practice of using shared network drives for all file storage, or performing regular backups of important files stored on the local computer.

Employees should inform the Information Technology staff when new software and hardware are installed on user machines. Software/hardware conflicts are always a possibility when new packages and devices are added, and users must recognize that they take some risks when making these additions. Troubleshooting is made easier if the Information Technology staff is informed about these new installations.

All computer-related resources belong to the West Virginia Higher Education Policy Commission and the State of West Virginia and no employee should have any expectation of privacy in any materials, data or information stored on or routed through these resources. No employee shall ever hide or attempt to hide his/her identity or represent him/herself as someone else through the West Virginia Higher Education Policy Commission computer resources. No employee shall use the West Virginia Higher Education Policy Commission computer resources in any manner that violates any other West Virginia Higher Education Policy Commission policy (e.g., sexual or other harassment, use of public resources for personal gain, etc.).

## **Prohibited Uses of Computer Resources**

- West Virginia Higher Education Policy Commission computer resources shall not be used for personal gain, as in operating a business or performing work related to a second job. This policy does not prohibit *de minimus* personal use of West Virginia Higher Education Policy Commission computer resources provided that such use does not otherwise violate this or any other policy or interfere with the employee's job performance. The West Virginia Higher Education Policy Commission reserves the right in all cases to investigate and to determine whether an employee's personal use of computer resources exceeds this *de minimus* standard.
- Employees are prohibited from accessing the Internet for any unethical purposes, including pornography, violence, gambling, racism, harassment, or any illegal activity. Employees are forbidden from using profanity or vulgarity when posing electronic mail via the Internet or posting to public forums (i.e., newsgroups).
- Employees shall not use unlicensed software.
- Employees shall not distribute West Virginia Higher Education Policy Commission software in ways that violate license agreements.
- Employees shall not invade the privacy of other users except as authorized by this policy and in a manner consistent with West Virginia Higher Education Policy Commission management responsibilities. This includes, but is not limited to, accessing network files through unauthorized use of coworkers' passwords and using coworkers' personal computers without their permission. (This does not include authorized Information Technology staff, who must periodically access computers and resources during the regular performance of their duties).
- Employees shall not generate unwanted electronic mail messages. These include, but are not limited to, solicitations, chain letter, and abusive correspondences.
- Computer use must be in compliance with all existing laws and the West Virginia State Ethics at W.Va. Code §6B-2-1 et seq.
- Only Information Technology staff may install software on network drives.
- Employees may not use computer resources in a manner which is unlawful or which unreasonably interferes with job performance, system performance/operations, or the policies, rules, or mission of the West Virginia Higher Education Policy Commission.

## **Disciplinary Actions for Breach of Policy**

Abuse or misuse of West Virginia Higher Education Policy Commission computing resources as established by this procedure will be processed by the use of the Disciplinary Procedures as set out in the "New Employee and Division Handbook." In addition, abuse or misuse may be a violation of criminal code in which case the West Virginia Higher Education Policy Commission would refer the matter to the appropriate authority.

August 24, 2004  
Updated: May 2013  
Revised: April 20, 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **FREEDOM OF INFORMATION DUPLICATING COST PROCEDURES**

The West Virginia Higher Education Policy Commission is often asked to provide copies of various documents under the Freedom of Information Act, WV Code §29B-1-1. In order to process all Freedom of Information Act (FOIA) requests in an equitable manner, there is hereby established a West Virginia Higher Education Policy Commission procedure related to duplicating costs for these requests.

The following outlines the steps in the procedure:

1. If a FOIA request is for information which has already been shared with someone else without costs related to duplicating materials, the materials are to be forwarded without charge.
2. If the FOIA request is for information which is management in nature and has not been prepared for routine dissemination to the general public, a cost of ten cents (10¢) per page may be charged to cover the costs of the copying process and staff time.
3. FOIA requests which ask for documents totaling less than fifty (50) pages shall be made without regard to duplicating costs.
4. When FOIA requests are received by staff, contact should be made with the Freedom of Information Officer (Executive Vice Chancellor for Administration) and Legal Division staff for assistance in complying with the request in a timely manner and for other legal assistance as may be appropriate.

Updated: April 2013

Revised: April 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **ELECTRONIC MOBILE COMMUNICATIONS DEVICES STIPEND PROCEDURES**

#### **Purpose**

To provide fair and flexible reimbursement or compensation for West Virginia Higher Education Policy Commission (Commission) staff that are required to use a mobile communications device to perform their assigned duties.

Employee may receive a stipend to offset the cost of using a personal electronic mobile communications device for business purposes. The amount of the stipend is based on minimal state rate plan, approved by the Executive Vice Chancellor for Administration or designee. The stipend is taxable per IRS regulations, but will not impact employee health insurance premium calculations.

#### **New Electronic Mobile Communications Device Authorization**

Employees authorized to receive a mobile device will receive a stipend based on the minimal state contract rate plan, and shall be approved by the Executive Vice Chancellor for Administration or designee. The stipend amount is taxable under IRS regulations.

#### **Procedures and Responsibilities for Stipends**

Any new request for a phone or stipend must be approved by the Executive Vice Chancellor for Administration or designee. This approval will include indication of whether the employee will absorb the cost of equipment or if the Commission will provide reimbursement for new equipment. The form for this one-time allowance is attached to this document.

The employee is responsible for obtaining an electronic mobile communications device and monthly plan that, at a minimum, meets the level of service required by the division. Because this device is owned by the employee, it may be used for personal and business use, but must be available for the performance of responsibilities as dictated by the conditions of their employment.

If employment is terminated for any reason, it is the employee's responsibility to meet the obligations of any service carrier contracts into which they have entered. The Commission is not responsible for paying further stipends, nor is it responsible for reimbursing the employee for any early termination fees.

The Commission may contribute toward the upgrade of a communication device, if such purchase or upgrade is necessary for the performance of the employee's job duties. The Commission may also contribute toward the replacement of aging or non-functioning devices, provided the employee's job responsibilities continue to require the use of a mobile device at the time of replacement. All such contributions will be at the discretion of the Executive Vice Chancellor for Administration or designee, and reported as taxable wages. Any employee receiving a stipend may

choose to purchase a service plan or equipment which exceeds the amount of the stipend for which they have been approved. In this case, the individual is responsible for all additional costs and taxes which are incurred.

The Commission's contribution toward the communication device and plan is not considered an entitlement, is not part of an employee's base salary, and may be changed and/or withdrawn by the Executive Vice Chancellor for Administration or designee, at any time.

This procedure is managed through the office of the Executive Vice Chancellor for Administration.

### **Rules and Responsibilities for Agency-Issued Electronic Mobile Communications Device**

Personal use of an agency issued device should be avoided. However, if the equipment is utilized for personal telephone calls and results in additional charges being assessed beyond the basic service plan, the individual will be responsible for reimbursing the agency for any such costs above and beyond the stated contract plan.

Update: June 2013  
Revised: April 2020



**West Virginia Higher Education Policy Commission  
Employee Mobile Communications Services Agreement  
Employee Owned Mobile Devices Plans  
Monthly Allowance**

Name \_\_\_\_\_

Department \_\_\_\_\_ Office Phone \_\_\_\_\_

Mobile Device Telephone Number: \_\_\_\_\_

The following department contribution toward the monthly recurring charges for a mobile telephone plan is approved.

Total <u>Monthly</u> Approved Contribution :  \$	Plan Description (Vendor name, required minutes, text messaging amount, long distance, data plan, etc.) <ul style="list-style-type: none"> <li>• Voice Plan –</li> <li>• Data Plan -</li> <li>• Amortized Equipment Amount (see attached):</li> </ul>
--	---

Month/Year Contribution Effective \_\_\_\_\_

Month/Year Contribution to discontinue (if known): \_\_\_\_\_

\_\_\_\_\_ **Check here to discontinue the monthly allowance**

The budget account to charge this amount from current expense is: \_\_\_\_\_

- I have read the terms of the West Virginia Higher Education Policy Commission Employee Mobile Communication Agreement and Procedures. I understand the employee responsibilities as outlined, including:
- Notifying Commission staff of new phone number and/or any changes in the phone number;
- The contribution of the Commission toward the purchase of a monthly mobile telephone plan is taxable income and is NOT part of my base salary;
- That contract provisions of any communication service plan entered into under this program are my personal responsibility;
- That the communications device will be used in the performance of my job responsibilities as defined by my supervisor; and,
- That I am responsible for the payment of any cost that exceeds the approved Commission contribution.

\_\_\_\_\_  
Employee Signature  
APPROVALS:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chancellor/Designee Signature

\_\_\_\_\_  
Date

**West Virginia Higher Education Policy Commission  
Employee Mobile Communications Services Agreement  
Employee Owned Mobile Devices and Service Activation Fees  
One Time Allowance**

Name \_\_\_\_\_

Department \_\_\_\_\_

Office Phone \_\_\_\_\_

Mobile Device Telephone Number: \_\_\_\_\_

The following department contribution toward a single allowance for purchase of a communication device is approved. Amount: \$ \_\_\_\_\_

Description of Device Purchased (make/model, etc): Verizon Droid (Motorola)	
Cost of Equipment	
Less Rebate (if applicable)	(\$ _____ )
Service Activation Fees (if applicable)	\$ _____
Total Approved Monthly Contribution (Divide total contribution by 24)	\$ _____

Attach all receipts for reimbursement.

- I have read the terms of the West Virginia Higher Education Policy Commission Employee Mobile Communication Agreement and Procedures. I understand the employee responsibilities as outlined, including:
- Notifying Commission staff of new phone number and/or any changes in the phone number;
- The contribution of the Commission toward the purchase of a monthly mobile telephone plan is taxable income and is NOT part of my base salary;
- That contract provisions of any communication service plan entered into under this program are my personal responsibility;
- That the communications device will be used in the performance of my job responsibilities as defined by my supervisor; and,
- That I am responsible for the payment of any cost that exceeds the approved Commission's contribution.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

APPROVALS:

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chancellor/Designee Signature

\_\_\_\_\_  
Date



West Virginia Higher Education Policy Commission  
 West Virginia Community and Technical College System  
 1018 Kanawha Boulevard, East, Suite 700  
 Charleston, West Virginia 25301



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*Interim Chancellor*

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 www.wvctcs.org

Sarah Armstrong Tucker, Ph.D.  
*Chancellor*

MEMORANDUM

TO: Staff  
 FROM: Matt Turner  
 Executive Vice Chancellor for Administration  
 DATE: April 2020  
 RE: E-mail Signature and Usage

In an attempt to provide consistent and effective communication to all customers, both internal and external, a standard e-mail signature has been developed for all staff to use in their e-mail messaging. The guidelines provided below are effective immediately and shall be implemented by all staff.

***Signature***

All staff shall use an e-mail signature in Microsoft Outlook and on mobile devices. The e-mail signature should be included on all internal and external messages. The e-mail signature shall include the items outlined below.

- Name
- Title
- West Virginia Higher Education Policy Commission *and/or*
- West Virginia Council for Community and Technical College Education
- 1018 Kanawha Boulevard, East
- Suite 700
- Charleston, West Virginia 25301
- 304-558- (Phone Number with Optional Extension)
- 304-558- (Fax Number)
- Cell Number (Optional)
- E-mail Address
- Website (Optional) (Approved websites: [www.wvhpec.edu](http://www.wvhpec.edu), [www.wvctcs.org](http://www.wvctcs.org), [www.cfww.com](http://www.cfww.com), [www.wvgearup.org](http://www.wvgearup.org), or [www.wvresearch.org](http://www.wvresearch.org))

For outreach staff working from an off-site location, please adjust the address and phone numbers as appropriate. If needed, you may include a confidentiality notice as part of your e-mail signature.

### ***Font Type, Color, and Graphics***

Guidelines concerning font type are outlined according to web and accessibility requirements. Each computer reads fonts differently, so, for example, if a staff member chooses to use Curlz MT font in an e-mail, that font may appear unreadable on the e-mail recipient's computer. The preferred font types are standard on most computers and digital devices, and thus should not cause any readability issues from computer to computer.

Guidelines regarding font size and color are intended to maintain the accessibility of the Commission and Council's materials. Keep in mind that not all customers or colleagues may be able to read text in a small font size and in a light color, when it is placed in front of textural backgrounds or if the contrast between the background and text is low (example: a white background with light-colored text). Therefore, a black or dark color font shall be utilized in e-mail messages and signatures. Staff are to refrain from using backgrounds, clip art or photos in e-mail messages or as part of an e-mail signature.

Please be reminded that your e-mail account is provided to you as part of your official duties and responsibilities. Therefore, it is to be utilized for official state business only. Every e-mail that you send and receive is an official state record and is subject to the Freedom of Information Act (FOIA). Therefore, staff should exercise caution in utilizing e-mail.

If you have questions regarding this matter, please do not hesitate to contact me.

# How to Guide: Email Signature

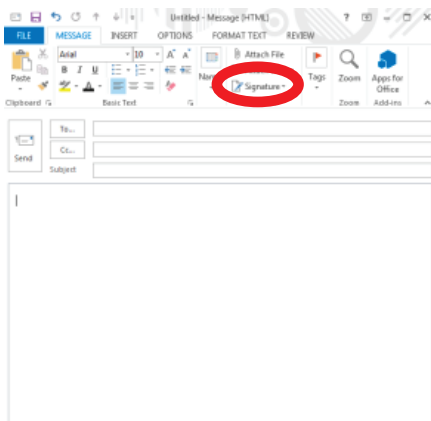
## Outlook, iPhone & iPad

### Formatting your Email Signature template

In Microsoft Outlook, open a 'New Email' message and in the top ribbon and select <<Signature>>.

Select 'Signatures...' and copy/paste the text from the attached Outlook file into the 'Edit signature' box. Update with your relevant contact details keeping all font styles, colors and sizes consistent with the instructions and click <<OK>> to save your updated email signature.

### WVCTCS (Example)



#### Name Last Name

Job Title  
Department

[name@wvhepc.edu](mailto:name@wvhepc.edu)

Phone Number

1018 Kanawha Boulevard East, Suite 700  
Charleston, WV 25301



### WVHEPC (Example)

#### Name Last Name

Job Title  
Department

[name@wvhepc.edu](mailto:name@wvhepc.edu)

Phone Number

1018 Kanawha Boulevard East, Suite 700  
Charleston, WV 25301



### BOTH IDENTITIES (Example)

#### Name Last Name

Job Title  
Department

[name@wvhepc.edu](mailto:name@wvhepc.edu)

Phone Number

1018 Kanawha Boulevard East, Suite 700  
Charleston, WV 25301



# How to Guide: Email Signature Outlook, iPhone & iPad

## How to setup your iPhone/iPad signature

**Before updating your email signature on your iPhone/iPad, make sure that it is updated on your PC by following these three steps:**

- A. On your computer, update your email signature in Outlook.
- B. Once this is done, send a blank email to yourself with your correct email signature.
- C. On your iPhone/iPad, open the email message and highlight and copy your entire email signature.

**On your iPhone/iPad, complete the three steps above before proceeding further.**

*\*Note: The below screenshots are for iPhone only.*

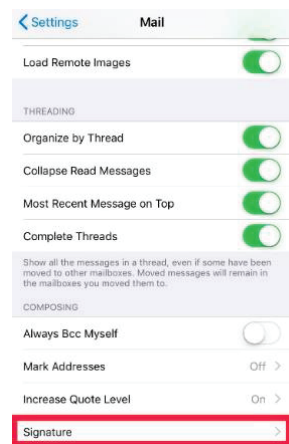
- 1. To update your email signature on your iPhone/iPad, first press the **Settings** icon.



- 2. Scroll down and tap **Mail**.



- 3. Once in the Mail settings, scroll down and tap **Signature**.

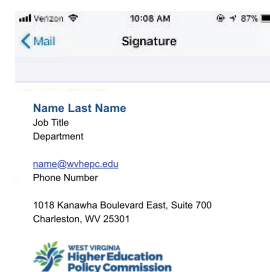
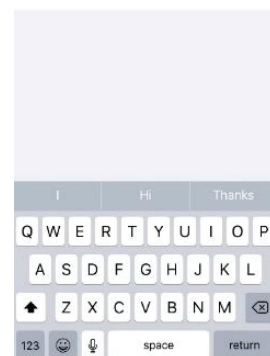


- 4. Delete any signature currently set (if applicable).

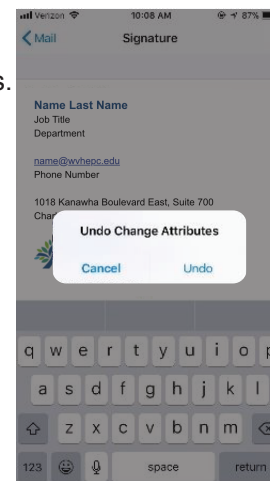
- 5. Tap lightly in the blank space until you see the option to press **Paste** and paste your email signature (that was copied).



- 6. By default, the email signature will paste in the wrong format (like the example below).



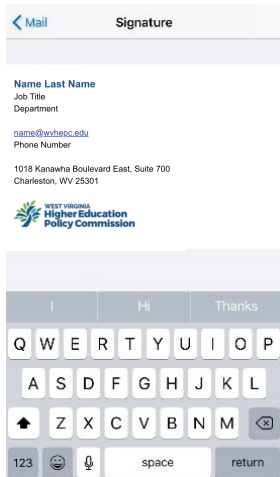
- 7. To correct this, shake/wave your phone until the option to **Undo Change Attributes** appears. You will need to literally shake your iPhone/iPad in your hand.



- 8. Press **Undo** and your signature will correct its format and mirror your Outlook signature.

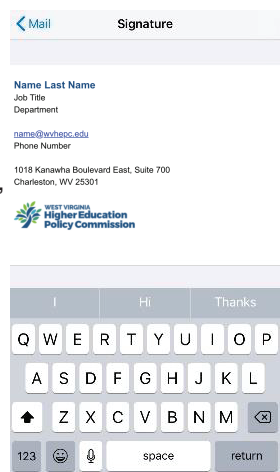
# How to Guide: Email Signature Outlook, iPhone & iPad

9. Tap lightly to place the cursor in front of the mailing address text.

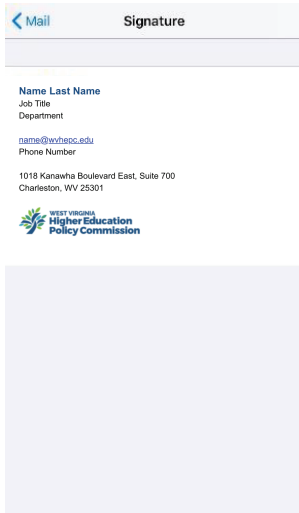
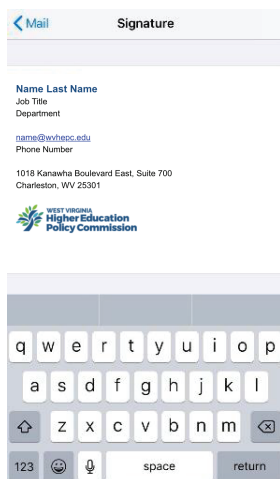


10. **Manually retype** your entire mailing address (both lines), so that you have two addresses showing.

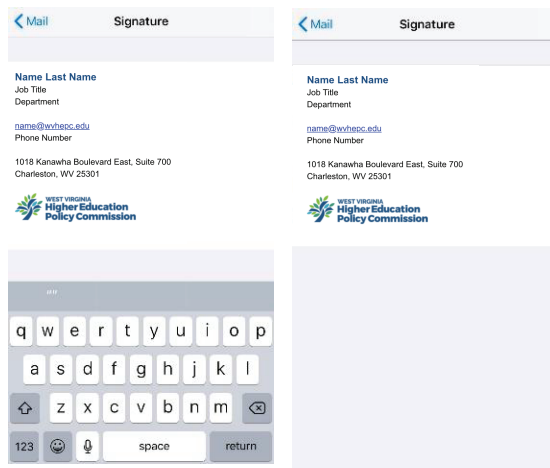
The original will show as underlined, and the new one, **should not be underlined**.



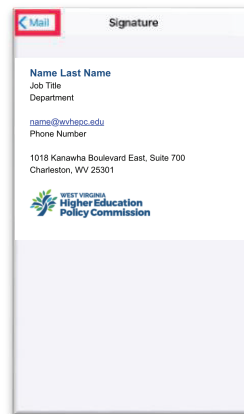
11. Put the cursor after the original address (tap lightly) and backspace to **delete the underlined address**.



12. Place cursor after the dash, and **delete the dash**.



13. Save your signature by tapping **Mail** in the top left-hand corner.



14. To test your signature, send an email to yourself from your iPhone/iPad and check it on your iPhone/iPad and laptop.



Allan L. McVey  
CABINET SECRETARY

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
FLEET MANAGEMENT DIVISION  
2101 WASHINGTON STREET, EAST  
P.O. BOX 50121  
CHARLESTON, WEST VIRGINIA 25305-0121

Kenny H. Yoakum  
DIRECTOR

Jim Justice, Governor STATE OF WEST VIRGINIA ADMINISTRATIVE POLICY

Effective: September 1, 2019

Issued By: Ann Urling, Deputy Chief of Staff

Subject: Employee Use of Employer Provided Motor Vehicles

**Purpose**

**The purpose of this policy is to establish a statewide, uniform policy on the use, assignment, operation and reporting of state owned, leased, or rented motor vehicles. The West Virginia Fleet Management Division (“FMD”) administers this policy in conjunction with the Governor’s Office.**

**1.0 Policy Application**

**1.1** This policy applies to all Executive Branch Agencies, whether or not the agency is exempt from the State Purchasing Division or subject to any other exemption.

**1.2** This policy applies to all state employees who drive or operate state vehicles (referred to as “employee” or “employees” throughout this policy).

**1.3** A copy of this statewide administrative policy shall be placed and kept in all state motor vehicles.

**1.4** This policy does not apply to law enforcement vehicles.

**1.5** This policy supersedes any previously issued policy.

**1.6** This policy may be amended, without reissuing the entire policy, as needed, by the addition of new sections.

**2.0 Authorized Use**

**State employees may only use a state owned, leased or rented motor vehicle for:**

**2.1.1 Official state business.**

**2.1.2 Travel between the place where the state motor vehicle is dispatched and the place where official state business is performed. Agencies must determine the lowest cost option before traveling by using Travel Management’s “Vehicle vs. Reimbursement Calculator”.**



**2.1.3 Travel when on *paid travel status*, between the place of state business and the place of temporary lodging or for obtaining food.**

**2.1.4 Travel when on paid travel status and not within reasonable walking distance, between the place of state business or the place of temporary lodging, and places to obtain meals, places to obtain medical assistance, and similar places required to sustain the health, welfare or continued efficient performance of the employee.**

**2.1.5 The transport of other officers, employees or guests of the state when they are on official state business.**

**2.1.6 The transport of consultants, contractors or commercial firm representatives when such transport directly relates to official state business.**

**2.1.7 Travel between the place of dispatch or place of performance of official state business to your personal residence only when specifically authorized by the proper authority in your agency.**

**2.1.8 With the approval of the FMD or the agency to which the vehicle is assigned, vehicles may also be driven by federal and other personnel acting on behalf of the state, including West Virginia National Guard personnel in the performance of their official duties.**

**2.1.9 De minimis personal use, such as a stop for lunch while traveling on official state business.**

## **2.2 Taking Vehicles to Personal Residence**

**A state employee may take a state vehicle to the employee's residence if:**

**2.2.1 The vehicle is assigned as a take home vehicle.**

**2.2.2 The vehicle is a pool vehicle, and the employee's home is located a distance from the vehicle pool location that taking the vehicle home would result in a savings in time and distance traveled.**

**2.2.3 Travel to the place of performance of state business must begin too early in the morning to allow for the employee to secure a State vehicle before departing that day.**

**2.2.4 The employee returns from the place of performance of state business too late in the day to return the state vehicle that day.**

## **2.3 Unauthorized Use**

**State vehicles may not be used for any purpose other than official state business. Unauthorized use includes, but is not limited to:**

**2.3.1 Any personal purpose.**

**2.3.2 Travel or tasks which are beyond the vehicle's rated capability.**

**2.3.3 Transport of family, friends, associates or other persons who are not employees of the state or serving the interest of the state (i.e. hitchhikers).**

**2.3.4 Transport of cargo which has no relation to the performance of official state business.**

**2.3.5 Transport of pets, livestock, domestic or wild animals except in the conduct of official state business.**

**2.3.6 Transport of acids, alcohol, explosives, weapons, ammunition or highly flammable material, except by the course of official duties, specific authorization, or in an emergency situation. Transport of these restricted items must be in compliance with all applicable local, state, and federal laws.**

**2.3.7 Transport of any item or equipment projecting from the side, front or rear of the vehicle in a way which constitutes an obstruction to safe driving, or a hazard to pedestrians or to other vehicles.**

**2.3.8 Operating a state motor vehicle while under the influence of legal or illegal drugs that could impair driving.**

**2.3.9 Operating a state motor vehicle after the consumption of alcohol.**

**2.3.10 Transport of employees from the normal place of business to restaurants or other places while not on official state business.**

**2.3.11 Engaging in any activity that would impede the safe operation of the vehicle.**

**2.3.12 Attending sporting events, including hunting and fishing, which are not in the service of state business.**

**2.3.13 Unauthorized use of state motor vehicles may result in disciplinary action from the employee's agency, up to and including termination.**

## **2.4 Other Prohibited Actions**

**State Employees operating a state vehicle on official business are prohibited from:**

**2.4.1 Unreasonably extending the length of time the vehicle is in the employee's possession beyond that which is required to complete the official purpose of the trip.**

**2.4.2 Operating state vehicles at any time with any measurable amount of alcohol from alcoholic beverages or controlled substances in their bodies.**

**2.4.3 Operating a state vehicle without a valid driver's license or while said license is under suspension or revocation.**

**2.4.4 Smoking, including vaping, while in a state vehicle.**

**2.4.5 Adding to a state vehicle any non-state issued devices, appliances, radios, antennas, seats, or other after-market equipment to a state vehicle, including but not limited to radar detectors, CB radios, satellite radios, non-state owned fixed-mount GPS devices, GPS blocking devices, speakers or car heaters to a state vehicle. Any aftermarket products including stickers and decals. Exemptions must be approved in writing by the FMD.**

**2.4.6 Removing or disabling any item from a state vehicle that was either installed on the vehicle by the manufacturer or by the state, including but not limited to cruise control, radio, spare tire, jack, state agency decals, door or seat belt warning buzzers, air bags, seats, seat belts, speakers, or On- Star equipment, or state-Owned GPS devices.**

## **2.5 Agency Responsibilities**

2.5.1 Agencies have the responsibility and authority to restrict or prohibit state employees from operating state vehicles when the agency is aware that the employee has a history of unsafe or irresponsible driving.

2.5.2 Heads of all departments, offices, agencies, commissions, boards, bureaus and institutions are responsible for implementation of this policy and all legislative requirements.

2.5.3 Agency heads, Cabinet Secretaries and Agency Fleet Coordinators must weigh all options when considering how to meet the transportation needs of their agency at the lowest cost to the state.

2.5.4 Department heads must annually complete state reporting requirements for all employees who take home a vehicle assigned in their department. Completed forms must be submitted to FMD no later than July 1<sup>st</sup> of each year or whenever a take home vehicle is newly assigned or reassigned. This form serves as the agency's justification of take-home vehicle assignment and proof of meeting the criteria outlined above.

## **2.6 Employee Responsibilities**

**2.6.1 Employees are expected to use state vehicles in a responsible manner and within the bounds of all traffic and parking laws.**

**2.6.2 Employees are responsible for their actions while using a state vehicle. Employees should have no expectation of privacy regarding the use of state vehicles. When using a state vehicle, employees consent to monitoring by the FMD, their agency, law enforcement agencies, and by any other individual or organization, including the Citizens of the State of West Virginia. State vehicle use may be tracked by all available means, including, but not limited to, mileage reporting, visual surveillance, and electronic monitoring to include Global Positioning System ("GPS") tracking. Misuse of a vehicle as reported by any form of monitoring and tracking may result in disciplinary action, criminal prosecution, and other penalties.**

**2.6.3 The employee must pay any towing, storage, parking or traffic fines and tolls resulting from the employee's violation of existing laws or ordinances while operating a state vehicle. The state will not reimburse the employee for any such fines.**

**2.6.4 Employees shall comply with all applicable state and local traffic and parking laws including paying tolls. In the event of a violation of such state and local traffic and parking laws, the employee shall be personally liable for any criminal or civil penalty incurred. All employees shall be required to notify his or her supervisor of any tickets as soon after receipt as possible (as well as any change in the status of an employee's driver's license) and prior to the payment due date or scheduled court date. Such employee shall also provide his or her supervisor proof that (a) such ticket has been paid within 10 working days after the payment of such ticket or (b) in the case of appeal, the court's final decision.**

**2.6.5 Employees shall possess a valid driver's license from the state in which he/she lives or in the case of a suspended or revoked license, special work privileges must be awarded by a court. In the case of a suspended or revoked license, the employee shall not operate a**

state motor vehicle until such privileges have been acknowledged by the employee's agency.

**2.6.6** Employees will complete a walk-around inspection and shall be responsible for checking the state motor vehicle before operating to ensure that the vehicle lights, turn signals, brake lights and other safety equipment is functional on the state motor vehicle. If the employee finds any of this equipment is not functioning properly, the employee shall report malfunctions to his or her supervisor as soon as possible in order to arrange for repairs.

**2.6.7** Employees must ensure that fuel vendors accept the state fuel card/approved FMD fueling mechanism prior to fueling or purchasing other vehicle related services.

**2.6.8** Employees are to lock the doors of state vehicles when the vehicle is not in use.

**2.6.9** Employees are not to drive any state vehicle with damages or defects which make the vehicle unsafe for operation. Employees must ensure that state vehicles are maintained in a manner that follows all manufacturer's recommendations including but not limited to the manufacturer's preventative maintenance schedule.

**2.6.10** The use of cellular phones while driving is unlawful unless used with a hands-free device. If a cell phone must be used while driving, employees should pull over to the side of the road at the safest opportunity or pull into a rest stop or parking lot and stop the vehicle. Texting while driving a state-owned vehicle is strictly prohibited and unlawful.

**2.6.11** When fueling a state-owned vehicle, the employee must:

- Make every effort to purchase fuel at the least expensive outlet.
- Purchase the lowest grade fuel available for the vehicle while following the manufacturer's recommendation.
- Purchase E-85 ethanol fuel if the state-vehicle is Flex Fuel capable

## **2.7 Authorized Passengers**

**2.7.1** The following individuals may ride as passengers in a state vehicle:

- A state employee conducting business on behalf of the state.
- Wards of the state.
- Passengers transported as part of an employee's specific duties.
- Other non-state employees who are independent contractors or agents conducting business on behalf of the state.

## **2.8 Personal Use**

**2.8.1** Taxable personal use of an employer-provided vehicle includes:

- Commuting between residence and work location.

**2.8.2** The following are examples of de minimis nontaxable personal use:

- A small personal detour (defined as less than 5 miles each direction) while on

**business, such as driving to lunch while out of the office on business.**

- **No more than one day per month commuting in employer vehicle. This does not mean that an employee can receive excludable reimbursements for commuting 12 days a year. The rule is available to cover infrequent, occasional situations.**
- **An employee using a motor pool vehicle for a business meeting where the employer requires that motor pool vehicles be returned at the end of the business day, but the employee is delayed, and the motor pool is closed when the employee arrives back at the office. The employee may take the vehicle home and return it the next morning. Assuming that this is an infrequent occurrence for that employee, that is, generally happens no more than once a month, the commuting value of the trip would be considered a nontaxable de minimis fringe benefit. If not an infrequent occurrence, the commute would be taxable to the employee.**

### 2.8.3 IRS Requirements for Employer Provided Vehicles

- The Internal Revenue Service requires payroll tax withholding and compensation reporting for employees using state-owned vehicles for non-business or commuting purposes. These employees must complete and certify Statements of Employer Provided Vehicle Use each payroll period.
- Separate records of business and personal mileage are required.

## 2.9 Take Home Vehicle Assignment Criteria

2.9.1 Each agency head has discretion to decide whether a take home vehicle should be assigned to an employee. Agencies must demonstrate that the duties of the employee meet one of the following criteria:

- In the case of an elected or appointed state officer, the duties of the office require driving about the State of West Virginia in the performance of official duty.
- In the case of department or commission heads, the statutory duties imposed in the discharge of the office require traveling a distance greater than 1,100 miles each month or that they are subject to official duty call at all times.
- In the case of employees, it must be shown that the major portion of the duties assigned to the employee must require travel on state business in excess of 1,100) miles each month, or that the vehicle is identified by the agency as an integral part of the job assignment. In addition, at least one of the following criteria must be met.
  - a. The job requires an employee to be on call on a recurring basis beyond normal duty hours and, when called out, requires immediate travel from a residence to a location where specific skills, services, tools, equipment or supplies are necessary to perform the job. This is typically based on the reporting on the number of call outs during the last 12 months.
  - b. The job involves leaving directly from home to a continually variable work location,

in which travel to a central location to obtain a state-owned vehicle would result in significant amounts of unnecessary travel time and loss of productive hours.

c. The employee works from a home office with continual variable worklocation (inspectors, case workers, investigators, etc.).

d. The employee is a public safety emergency responder.

- In computing the number of miles required to be driven by a department head or an employee, the distance between the individual's home and office or designated official station may not be considered as a part of the total.
- Employees who are assigned a state-vehicle on a temporary basis may take that vehicle to their place of residence for de minimis commuting usage, such as staging the vehicle at home in preparation to travel the next day, or returning from travel to your home too late in the day to return the vehicle to your duty location.

## **2.10 Vehicle Accident**

### **2.10.1 In case of a vehicle accident while operating a state vehicle employees must:**

- **Notify the West Virginia State Police, local law enforcement authority or other appropriate law enforcement agency.**
- **Notify the Board of Risk and Insurance Management as soon as reasonably practical by completing the Loss Reporting Form on the Board of Risk and Insurance Management's website and submitting the process prescribed by the agency.**
- **Notify manager and/or supervisor.**
- **Make no statement as to fault or liability. If a claim results, respond to law enforcement authorities or someone hired by the state to investigate the accident.**
- **Obtain the name, address, phone number, driver's license number, vehicle license plate, insurance company and policy number of all involved drivers. Diagram the accident. Obtain the name, address, and phone number of witnesses and passengers.**
- **Provide the attending police authority's report to his/her agency's vehicle coordinator and repair facility so that it can be attached to the repair estimate.**
- **Contact the FMD to cancel any services related to the vehicle.**
- **Make every effort to have the vehicle towed to the nearest secure state facility, in lieu of a private storage facility, should the vehicle need to be towed.**

## **2.11 Vehicle Theft**

### **2.11.1 In the event that a state vehicle is stolen, employees must:**

**Notify the appropriate law enforcement agency. Record the attending officer's name and**

**badge number.**

- **Notify the appropriate law enforcement agency. Record the attending officer's name and badge number.**
- **Notify the Board of Risk and Insurance Management.**
- **Notify your agency director/agency fleet coordinator of the theft.**
- **Turn in any keys to the vehicle to the agency fleet coordinator to cancel any services, fueling and maintenance.**

**2.12 Vehicle Fleet Administration**

2.12.1 All newly purchased vehicles must be titled, registered and plated through the Division of Motor Vehicles.

2.12.2 Agencies are responsible All state-owned vehicles are required to have a current state plate and must be entered into wvOASIS Fixed Assets.

2.12.3 The FMD oversees vehicles 1-ton and under, excluding ATV's or vehicles requiring a commercial driver's license. Agencies must report vehicle information fitting these criteria to the FMD, including maintenance and fuel purchases.

2.12.4 Agencies may keep supplemental vehicle information and records in other systems, but these supplemental systems do not supersede the requirements of this policy to report vehicle information to the FMD.

2.12.5 Agencies are responsible to maintain current and accurate vehicle information such as odometer readings for vehicles in the agency's fleet under the oversight of the FMD and report that information to the FMD.

**2.13 Vehicle Fuel Cards**

2.13.1 The state-wide fleet fuel card program provides state agencies with a widely accepted fleet fuel card. The card allows employees driving state vehicles to purchase fuel for those vehicles. Use of the fleet fuel card is designed to streamline and automate the purchase of fuel for state business.

2.13.2 Fuel transactions must be reported to the FMD at least annually. All fueling transaction must be facilitated by an approved FMD mechanism.

**2.14 Vehicle Maintenance**

2.14.1 All Maintenance/Repair activity must be reported to the FMD at least annually.

2.14.2 All Maintenance/Repair activity must be facilitated by an approved FMD mechanism.

**Inquiries about this policy should be directed to:**

**Director, Fleet Management Division 2101 Washington Street, East PO Box 50121, Building 17  
Charleston, WV 25305-0121  
Ph # 304-558-2106 or Fax # 304-558-4119**

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **PROCEDURES REGARDING RECEIPT OF FREEDOM OF INFORMATION REQUESTS**

#### **Background**

In accordance with the Freedom of Information Act at West Virginia Code '29B-1-1, the West Virginia Higher Education Policy Commission (Commission) frequently receives requests for information under the Act. The law requires that this information be provided within a maximum of five working days of receipt of the request. In order to centralize these requests and to be in compliance with the law, it is necessary to establish procedures for handling them in a timely and appropriate fashion.

#### **West Virginia Higher Education Policy Commission Procedure Statement**

It is the policy of the Commission to provide timely, accurate, and consistent agency responses to Freedom of Information Act requests.

#### **Freedom of Information Officer**

The Executive Vice Chancellor for Administration, or in her/his absence, the Director of Administrative Services, will serve as the Freedom of Information Officer for the Commission. The Freedom of Information Officer shall be responsible for reviewing any requests for information and for referral to the appropriate staff member for preparing a response.

#### **Process for Handling Requests**

All requests, either in hard copy or electronic form, addressed to the Freedom of Information Officer shall be immediately hand delivered upon receipt to the Freedom of Information Officer (Office of the Executive Vice Chancellor for Administration). If the person who initially receives the request is the person with the expertise in the area of the request, that individual should begin immediately to prepare a response but must also provide a copy of the request to the Freedom of Information Officer.

The Freedom of Information Officer will, upon receipt of a request, make a referral to the appropriate staff member to prepare a response. The Freedom of Information Officer will determine if it is necessary for the staff member to share a copy of a draft response with the Freedom of Information Officer. The staff member should consult with the Legal Division staff to prepare an appropriate response in accordance with applicable statutory requirements. The staff member preparing the response will be responsible for signing the final response. All responses to Freedom of Information Act requests must be within the five working days statutorily designated response period. The Freedom of Information Officer is to be copied on all final letters of response to Freedom of Information Act requests and, depending on length of attachments, should receive copies of accompanying materials.



## **Review of Agency Documents**

Under certain circumstances, as determined appropriate by the staff member preparing the response and the Freedom of Information Officer, a time may be arranged for the individual requesting the information to review the documents at the Commission Office in lieu of providing copies of lengthy documents to the individual. Should the volume of documents be more than 50 pages, the person requesting said documents shall be afforded the opportunity to review the documents and make copies as appropriate. The Duplicating Cost Procedures of the West Virginia Higher Education Policy Commission (copy attached) are to be followed if the Freedom of Information Act request includes a request for copies of agency documents. A check to the West Virginia Higher Education Policy Commission shall be presented to the staff member responding to the FOIA request before any copied documents are removed from the premises.

August 21, 2003  
Updated: April 2013

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**LUNCHROOM GUIDELINES**

A Lunchroom is available on the 8<sup>th</sup> floor of the office building which provides staff the opportunity to step away from their office to eat their lunch. Vending machines and an ice machine are placed in the lunchroom which are available to employees.

The Lunchroom is open Monday through Friday, 11:30 a.m. - 2:30 p.m. for the purpose of employees to eat lunch. The room may also be used for work projects and perhaps internal meetings during the remaining work hours.

The office-wide no smoking policy applies to the lunchroom area.

It is very important that staff be conscious of noise level since other staff are working in nearby offices and outside visitors may be present at any time.

Perishable food items must be removed from the area on a daily basis. Dirty dishes or eating utensils should not be left in the room. Garbage should be placed in the appropriate cans.

Please help to keep this room clean and neat.

Turn off all lights and equipment when leaving the room.

Revised: April 20, 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### INCLEMENT WEATHER PROCEDURES

Employees of the West Virginia Higher Education Policy Commission (Commission) follow the procedures outlined in Procedural Rule, Series 38, Employee Leave, to cover absences related to inclement weather. Section 13.3 of Series 38 states in part that absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, or the employee must be removed from the payroll for the time in question. Sick leave may not be charged for absence due to weather. Time lost from work may be made up in the same work week at the discretion of the employee's supervisor.

The following procedures are to be utilized for absences related to inclement weather:

1. Closure of the Commission offices located in Charleston, West Virginia will be in accordance with any directives issued by the Governor's Office to close other State agency offices located in the Charleston area.
2. The Chancellor may, at his/her discretion, determine that conditions are such that closing the office or reducing to minimal staffing levels is appropriate.
3. Employees are to contact their immediate supervisor within one hour of the start of the work day to report delays or absences related to inclement weather. Examples include hazardous road conditions, power outages, secondary school delays, etc.
4. The declaration of a "State of Emergency" issued by the Governor does not trigger the closure of the offices but rather authorizes overtime for emergency and highway crews and for federal financial assistance for areas damaged due to the weather.
5. If the Governor closes state offices, employees are not required to report for duty. If state offices are closed during the course of the regular business day, employees will be dismissed at the designated time. In such instances, employees will not be required to use annual leave to cover their absence. Announcements from the Governor's Office are made available through various news outlets. Official notification to employees will be distributed via a text alert system and/or electronic mail from the Chancellor's Office or the Office of the Executive Vice Chancellor for Administration.
6. An employee whose office is located at an institution of higher education is to follow closing declarations by the president of the institution where their office is located. Annual leave, unless previously requested, will not be charged to employees when the institution is closed.
7. Employees of the West Virginia Network for Educational Telecomputing (WVNET) shall follow the inclement weather procedures established by WVNET.

8. If an employee decides to leave work early due to inclement weather, the employee must clear the early departure with their immediate supervisor. The employee is to submit an annual leave request prior to leaving the office.
9. A declaration of inclement weather or other emergency applies only to staff scheduled to work for that day. In the event of closure due to inclement weather or other emergency, annual and sick leave previously requested will not be restored.

December 2010 cla  
Updated: May 2013  
Revised: April 2020

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### PARKING ASSIGNMENT PROCEDURES

#### Background

The West Virginia Higher Education Policy Commission (Commission) acquired office space at the present location, Boulevard Towers, in 1989 and is currently assigned five (5) parking lots, two (2) on-site lots adjacent to the building and three (3) off-site lots which are within close proximity to the building. Each parking lot shall be considered a separate and distinct lot for the purpose of filling space vacancies with Lot 1 being the most preferable. A description of each lot follows:

Lot 1 (on-site parking referred to as street level spaces adjacent to the building) consists of the spaces located on Leon Sullivan Way and the spaces on the street-level between Leon Sullivan Way and Dunbar Street.

Lot 2 (on-site parking referred to as elevated spaces adjacent to the building) consists of the spaces located beside Charleston Catholic High School and Dunbar Street.

#### Research

These procedures are derived from the following: extensive review of current Commission practices and precedents; examination of other State agency parking procedures; and a thorough study of issues raised by both Classified Staff Council and individual staff members over the years.

The parking assignment procedures provide a definitive description for filling vacated parking spaces while at the same time maintaining a fair and equitable system as well as retaining the use of employee seniority as the determining factor in the assignment of parking spaces.

#### West Virginia Higher Education Policy Commission Procedural Statement

Since all employees are important to the function of the West Virginia Higher Education Policy Commission, it is the desire of the Commission to develop parking assignment procedures that are fair, equitable and easily understood by all employees. These procedures shall apply to all Charleston-based employees of the Commission and the West Virginia Council for Community and Technical College Education (Council).

#### Seniority

Except as referenced below regarding **RESERVED SPACES**, all parking spaces shall be assigned on the basis of employee seniority. Seniority shall be defined as total service to the West Virginia Higher Education Policy Commission or West Virginia Council for Community

and Technical College Education as a regular, full-time employee beginning on the date of hire. If employees have the same hire date, seniority shall be determined by alphabetical order. Individuals employed by ongoing contract (not including contracts with private employee service agencies) shall have the same seniority rights as full-time Commission or Council employees. An example would be those individuals such as Assistant Attorneys General.

Individuals employed through an employment service agency, such as Manpower, shall not be permitted to count such employment or service time toward seniority. Individuals serving as temporary employees shall not be permitted to count such employment toward seniority. However, these individuals shall be permitted to park on the most distant off-site parking lot.

Employees currently not using a parking space shall remain on the parking assignment list for seniority purposes only. If an individual decides to utilize a parking space, he/she will be assigned a space on the appropriate lot once a space becomes available. Until such space is available, the employee will be permitted to park on the most distant parking lot.

When an employee terminates employment with the Commission or Council, he/she shall be removed from the parking assignment list. If an individual returns to the Commission or Council for permanent employment within a twelve (12) month period, he/she shall park on the most distant lot and be placed on the bottom of that parking lot list. When a space becomes available on the lot where the employee was assigned a space prior to their initial departure, he/she will be afforded an opportunity to return to that lot.

### **Filling Space Vacancies**

As noted under the section, Seniority, Reserved Spaces shall be provided for the following positions:

Chancellor of the West Virginia Higher Education Policy Commission  
Chancellor of the West Virginia Council for Community and Technical College Education  
Executive Vice Chancellor for Administration

In addition, a total of four (4) parking spaces located on Lot 1 are to be reserved for the following:

State Vehicles-two (2) spaces  
Visitor Parking-two (2) spaces

Parking spaces become available by the departure of an employee or by the acquisition of additional parking spaces through the lease agreement. As a space vacancy occurs, the following procedure shall be implemented:

The most senior employee from the next numbered lot to the lot space being vacated shall be given the option of filling the vacated space. Should the employee opt not to move, then the next

senior employee from the next numbered lot shall be offered such opportunity to fill the space. The overture will continue until an employee agrees to move. An employee who is granted the opportunity to move to a vacated lot space but declines will retain her/his seniority for the purpose of accepting a future overture to move when future vacancies occur on the lowered numbered lot.

Illustration 1 Vacancy occurs on Lot 1. The following procedure shall take place:

The most senior employee on Lot 2 shall be given the option to fill the vacant space on Lot 1. This begins the domino effect as the most senior employee from Lot 3 shall move to the vacated space on Lot 2, the most senior employee from Lot 4 shall move to the vacated space on Lot 3, and finally, the most senior employee from Lot 5 shall move to the vacated space on Lot 4.

Once the process has been completed as it relates to filling space vacancies, a revised Parking Assignment list shall be produced and distributed to all employees.

### **Administration/Coordination of Parking Assignments**

The oversight of the parking assignments rests with the Executive Vice Chancellor for Administration. The parking spaces shall be assigned in accordance with the above procedures. The Executive Vice Chancellor for Administration may request descriptive information regarding vehicles such as make, model, year and license plate number for record keeping purposes.

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**WEST VIRGINIA HIGHER EDUCATION POLICY  
COMMISSION  
AND  
WEST VIRGINIA COMMUNITY & TECHNICAL  
COLLEGE SYSTEM**

**PURCHASING PROCEDURES MANUAL**

**April 20, 2018  
Updated 11/04/2020**



**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
WEST VIRGINIA COUNCIL FOR COMMUNITY & TECHNICAL COLLEGE EDUCATION  
PURCHASING PROCEDURES MANUAL  
~~April 20, 2018~~  
November 4, 2020**

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## SECTION 1 GENERAL INFORMATION

### 1.1 Introduction

1.1.1 The public higher education institutions, like all agencies of State Government, need a wide variety of goods and services for efficient and effective operation. Purchasing practices and procedures established by state law, the West Virginia Council for Community and Technical College Education (the “Council”) and the West Virginia Higher Education Policy Commission (the “Commission”) are necessary to protect the interests of the taxpayers, vendors, the Council, the Commission, the governing boards, the institutions and their employees.

1.1.2 The Higher Education Purchasing Procedures Manual has been prepared as a guide to assist purchasing personnel at the institutions\* in the proper methods of purchasing products and services from within state government, in the open market, and in managing and disposing of surplus, obsolete and unusable materials, supplies and equipment. Following them will help ensure that purchases, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment are handled within the parameter of state law, and the rules, policies and procedures established by the Council and Commission.

**\*As per West Virginia State Code §18B-5-4, West Virginia University, Marshall University and the West Virginia School of Osteopathic Medicine are exempt from these procedures.**

1.1.3 The Higher Education Purchasing Procedures Manual is not to be construed as a complete or final determination of any purchasing matter and may be amended or changed at the discretion of the Vice Chancellor for Administration to ensure compliance with state law, and the rules, policies and procedures of the Council and Commission. Institutions may also develop internal guidelines and procedures to assist in managing purchasing, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment, provided they are consistent with this manual, the rules of the Council and Commission, and state law.

### 1.2 Purchasing Authority under West Virginia Code

1.2.1 Authority to purchase and acquire materials, supplies, equipment, services and printing, entering into lease and lease-purchase agreements, and to dispose of surplus, obsolete and unusable materials, supplies and equipment is granted to the Council, Commission and governing boards in West Virginia Code §18B-5-4 through §18B-5-9 and §18B-19-1et.seq [[click here for access to Chapter 18B](#)]. As required by law, the Council and Commission have promulgated a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#), to manage higher education purchasing.

### 1.3 Purpose

1.3.1 The purpose of the Higher Education Purchasing Procedures Manual is to:

- a. Provide a fiscally sound purchasing process that serves the needs of the Council and Commission, the governing boards and their institution in a timely fashion;

- b. Ensure that all purchases and acquisitions are made within the limits of available appropriations and funds;
- c. Ensure that purchase and acquisition of materials, supplies, equipment, services and printing, lease and lease-purchases agreements, receiving, inventory management, and the disposal of surplus, obsolete and unusable materials, supplies and equipment are made in compliance with state law, and the rules and policies of the Council and Commission;
- d. Simplify, clarify, and provide uniform procedures for procurement, receiving, inventory management and for disposal of surplus, obsolete and unusable materials, supplies and equipment, and make as consistent as possible the various rules and regulations at each of the institutions;
- e. Permit the continued development of policies, procedures, and practices for procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment;
- f. Provide for increased public confidence in the procedures followed in higher education procurement;
- g. Ensure the fair and equitable treatment of all persons who participate in the procurement of goods and services by the Council, the Commission, the governing boards and their institutions;
- h. Provide increased economy and efficiency in the Council's, Commission's and the governing boards' procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds entrusted to the Council, Commission, the governing boards and their institutions;
- i. Foster effective and broad-based competition within the free enterprise system; and
- j. Provide safeguards for the maintenance of a procurement system of quality and integrity.

**1.4. Purchasing Authority of the Council, the Commission and the Governing Boards and the Delegation of said Authority**

1.4.1 Authority of the Governing Boards

1.4.1.1 [West Virginia State Code §18B-5-4](#) mandates that the Council and Commission shall jointly adopt rules governing and controlling acquisition and purchase of materials, supplies, equipment, services, and printing, leases and lease purchases, and the disposal of surplus, obsolete and unusable materials, supplies and equipment.

1.4.2 Delegation of Authority to the Vice Chancellor for Administration

1.4.2.1 To implement its authority, the Council and Commission have adopted a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#). Among other things, these rules grant the Vice Chancellor for Administration the authority and duty to administer and oversee the higher education purchasing system and to develop administrative manuals, guidelines, procedures, and forms, consistent with the rule, which shall be followed

by the Council, the Commission, the Governing Boards and institutions for purchase and acquisition of materials, supplies, equipment, services, and printing; leases and lease-purchases receiving and inventory management; and disposal of surplus, obsolete and unusable materials, supplies and equipment. Such administrative manuals, guidelines, procedures and forms may be reviewed by, but do not require approval of, the Council and Commission or the Chancellors before being implemented by the Vice Chancellor for Administration.

1.4.2.2 The Vice Chancellor for Administration also has the authority and duty to provide administrative oversight for purchases and contracts for material, supplies, equipment, services, printing, leases and lease-purchases required by the Commission and Council offices and West Virginia Network for Educational Telecomputing. The Vice Chancellor shall appoint a Chief Procurement Officer/Director of Procurement (CPO/DOP) for these administrative units.

#### 1.4.3 Delegation of Authority to the Presidents

1.4.3.1 The governing boards have delegated to the presidents or other administrative head of an institution, the authority and duty to administer and oversee the institution's purchasing, receiving, and inventory management activities, and to dispose of the institution's surplus, obsolete and unusable materials, supplies and equipment. A governing board may also revoke such delegated authority.

#### 1.4.4 Delegation of Authority to a Chief Procurement Officer/Director of Procurement (CPO/DOP)

1.4.4.1 Each president shall appoint a CPO/DOP who shall assist the president in carrying out the duties, obligations and remedies imposed by the governing board having jurisdiction, consistent with the rules of the Council or Commission and state law. Such appointment shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Unless otherwise stated in writing by the president, the CPO/DOP shall have full authority to act as the designee of the president for purchase and acquisition of all materials, supplies, equipment, services, and printing; leases and lease-purchases, receiving and inventory management; and for disposal of surplus, obsolete and unusable materials, supplies and equipment as may be required by the institution.

#### 1.4.5 Delegation of Authority to a Buyer or other Designee

1.4.5.1 To assist the CPO/DOP in performing his or her duties and obligations, the CPO/DOP may appoint Buyers and delegate authority to them as designees, or may delegate such authority to any department within an institution. Such delegation of authority shall be in compliance with state law, the rules, policies and procedures of the Council and Commission, the governing board having jurisdiction, and this Purchasing Procedures Manual. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Notwithstanding any provision to the contrary, responsibility for ensuring institutional compliance with the West Virginia Code and the Council's, Commission's and governing board's policies and rules shall rest with and be the responsibility of the CPO/DOP.

### 1.5 General Provisions

1.5.1 West Virginia Code: No provisions of this Purchasing Procedures Manual shall be deemed to supersede the West Virginia Code. Vendors shall familiarize themselves with applicable

provisions of the West Virginia Code.

- 1.5.2 Severability: If any provision of the Purchasing Procedures Manual or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these procedures which can be given effect without the invalid provisions or application, and to this end, the provisions of procedures are declared to be severable.
- 1.5.3 Supplementary General Principles of Law Applicable: Unless displaced by a particular provision of West Virginia Code, the principles of law and equity, including the Uniform Commercial Code of West Virginia, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Purchasing Procedures Manual.
- 1.5.4 Obligation of Good Faith: Every responsibility or duty within this Purchasing Procedures Manual imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable government standards of fair dealing.
- 1.5.5 Singular-Plural and Gender Rule: In the Purchasing Procedures Manual, unless the context requires otherwise, words in the singular number include the plural, and those in the plural include the singular; and words of a particular gender include any gender and the neuter.
- 1.5.6 Public Access to Purchasing Files: Purchasing files are public records to the extent provided in the West Virginia Code and they shall be available to the public for examination and inspection at the purchasing office of the procuring institution.
- 1.5.7 Deviations From the Purchasing Procedures Manual: The Vice Chancellor for Administration may approve a deviation from the guidelines set forth in the Purchasing Procedures Manual when it is clearly evident that a deviation is in the best interest of the institution provided such deviation does not conflict with the policies and rules of the Council, the Commission and the West Virginia Code. Any such deviation shall be requested by the CPO/DOP in writing and the request shall: (a) clearly explain the deviation being requested and the circumstances that give rise to the request, (b) why the deviation is in the best interest of the institution; and (c) the consequences to the institution if the deviation is not granted. If the deviation is approved by the Vice Chancellor for Administration, such approval shall be made in writing prior to implementation by the institution.
- 1.5.8 Incurring Costs of Bids or Proposals: Neither the Council, the Commission nor the Governing Boards and the institutions shall be liable for any expense incurred by a vendor or vendors in preparation and/or presentation of a bid or proposal.

## **1.6 Procurement Advisory Council**

- 1.6.1 The Vice Chancellor for Administration may establish a Procurement Advisory Council. If created, this Council upon adequate notice shall meet for discussion of problems and make recommendations to improve the procurement process. When requested by the Vice Chancellor for Administration, the Procurement Advisory Council may conduct studies, research or analysis, and make reports and recommendation with respect to subjects or matters related to procurement, receiving, inventory management, and disposal of surplus property.



The Procurement Advisory Council shall consist of qualified representatives from various institutions and such other persons as the Vice Chancellor for Administration may deem desirable.

- 1.6.2 The Vice Chancellor for Administration may also appoint advisory groups to assist with respect to specifications or procurement in specific areas, and with respect to other matters relating to procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

## **1.7 Dissemination of the Purchasing Procedures Manual**

- 1.7.1 The Purchasing Procedures Manual is available on the Commission's website at <http://www.wvhepc.edu/resources/purchasing-and-finance/> and the Council's website at <http://wvctcs.org/>.

## **1.8 Utilization of Small, Women-Owned and Minority-Owned Businesses Resident in West Virginia (SWAM)**

- 1.8.1 CPO/DOPs should encourage West Virginia's small, women-owned and minority businesses (SWAM) to participate in purchasing opportunities at the state institutions of higher education. It is generally recognized that SWAM businesses should be afforded an equal opportunity to compete. Such businesses are dependent upon being given this opportunity to compete in the marketplace with their larger competitors.

SWAM related terms defined:

- a. A Minority-owned Business is defined as a business that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, limited liability company or other, by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individual(s).
- b. A "minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:
  1. African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
  2. Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands including, but not limited to, Japan, China, Vietnam, Samoa, Laos Cambodia, Taiwan, Northern Mariana, the Philippines, a US territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
  3. Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
  4. Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
- c. Small Business means a business independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law which, together with affiliates, has 250 or fewer

- employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.
- d. Women-owned Business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law. In the case of a corporation, partnership, limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

The following are recommended guidelines for support of SWAM businesses resident in West Virginia:

- a. Actively strive to attain reasonable and responsible institutional policies and goals regarding purchases from SWAM businesses;
- b. Participate in local and/or national organizations whose purpose is to stimulate growth of these entities;
- c. Seek new sources of supplies and services; and
- d. Encourage employees to support SWAM businesses.

## **1.9 Ethics in Public Purchasing**

1.9.1 Purchasing and disposal of surplus, obsolete and unusable materials, supplies and equipment in the public sector is a public trust and the highest degree of professional and ethical standards should be maintained at all times. West Virginia State Code §6B, the West Virginia Governmental Ethics Act, is applicable to all purchasing, receiving, inventory management, and surplus property activities performed under the jurisdiction of the Council, the Commission and the Governing Boards.

1.9.2 Any person who is not authorized to approve a purchase or contract, or who does so in a manner that is in violation of state law, or the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction, may be held personally liable for the cost of such purchase or contract as provided in state law. Purchases or contracts violating state law and/or the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction shall be void and of no effect.

1.9.3 Except as may be authorized by the provisions of West Virginia State Code §6B: (1) neither the CPO/DOP nor any employee of the institution's Purchasing Office shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the CPO/DOP nor any employee of the institution's Purchasing Office shall accept or receive directly or indirectly from any person, firm or corporation, known by the CPO/DOP or employee, to be interested in any bid, contract or purchase order, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future award or compensation. The provisions of West Virginia Code §5A-3-29, 30, 31 shall apply [[click here for access to Chapter 5A](#)].

- 1.9.4 Except as may be authorized by the provisions of [Chapter 6B of the West Virginia Code](#): (1) neither the Council, the Commission, the governing board, nor any employee of the Council, the Commission or the governing board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the Council, the Commission, the governing board or any employee of said Council, Commission or governing board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Council, the Commission or the governing board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.
- 1.9.5 Any vendor violating the West Virginia Code or the rules, policies and procedures of the Council and Commission or the governing board having jurisdiction may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.
- 1.9.6 [The ethical practices of the National Institute of Governmental Purchasing](#) (NIGP) should guide the conduct of every person employed in an institution's purchasing.

**SECTION 2**  
**PURCHASING ORGANIZATION AND OBJECTIVES**

**2.1 Authority of the Chief Procurement Officer/Director of Procurement (CPO/DOP)**

2.1.1 The CPO/DOP shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, leases and lease-purchases, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment as the designee of the institution's president, or the Vice Chancellor for Administration as in the case of the Council and Commission Offices and West Virginia Network for Educational Telecomputing. The CPO/DOP shall serve as the institution's primary procurement official.

**2.2 Responsibilities, Duties and Remedies of the CPO/DOP**

2.2.1 As required by the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction, the CPO/DOP shall have the duty and responsibility to:

- a. Ensure compliance with state law, and the rules, policies, procedures of the Council and Commission, the governing board having jurisdiction, and the institution as they apply to purchasing, leases and lease-purchases, receiving, inventory management and the disposal of surplus, obsolete and unusable materials, supplies and equipment;
- b. Procure or supervise the procurement of all materials, supplies, equipment, services, printing, leases and lease purchases, repairs and alterations, and construction needed by the institution;
- c. Establish and maintain professional procurement procedures within the institution;
- d. Sell, trade, or otherwise dispose of surplus, obsolete and unusable materials, supplies and equipment belonging to the institution;
- e. Establish institutional guidelines and procedures for purchases not exceeding \$50,000. Such guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines, and any updates, shall be approved by the president and filed with the Vice Chancellor for Administration;
- f. Establish and maintain institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing, and for inventorying the institution's equipment that has a unit value at the time of purchase of \$5,000 or more and a useful life of at least one year. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit. These guidelines and procedures shall be consistent with the administrative manuals, guidelines, procedures and forms developed by the Vice Chancellor for Administration. They shall be approved by the president and filed with the Vice Chancellor for Administration;
- g. Review specifications and descriptions before soliciting bids or proposals to ensure the specifications and descriptions are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;

- h. Advertise all purchases for which formal competitive bids or proposals are being solicited, and post or otherwise make available notice of such purchases in the institution's purchasing office;
- i. Maintain the institution's purchasing files;
- j. Accept or reject any and all bids in whole or in part;
- k. Waive minor irregularities in bids, bidding documents and/or specifications;
- l. Apply and enforce standard specifications;
- m. Prescribe the amount of deposit or bond to be submitted with any bid or contract;
- n. Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
- o. Hear and render opinions on vendor complaints and protests;
- p. Prior to the issuance of a purchase order that exceeds \$25,000, ensure that the successful vendor is properly registered with the Purchasing Division of the Department of Administration in accordance with state law before a contract or purchase order is issued to that vendor;
- q. Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
- r. Put special emphasis on identifying in-state small businesses and provide these vendors the opportunity to participate in the institution's purchases; and
- s. Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, and from cooperative buying groups, consortia and federal government contracts when price, availability and quality are comparable to those in the open market.

2.2.2 As required by state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP shall have the following remedies:

- a. In the event that a vendor fails to honor any contractual term or condition, the CPO/DOP may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;
- b. Vendors failing to honor contractual obligations may be held responsible for all differences in cost; and
- c. Declare a vendor or bid non-responsible or nonresponsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document.

## **2.3 Delegation of Authority by the CPO/DOP**

### **2.3.1 Delegation to a Buyer in the Institution's Purchasing Department**

2.3.1.1 Subject to state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP may appoint Buyers and delegate authority to them as designees. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.1.2 To be appointed as a Buyer, the person under consideration must, at a minimum, be either (a) a graduate of an accredited college or university; or (b) have at least four years' experience in purchasing for any unit of government or any business, commercial or industrial enterprise.

2.3.1.3 Any person making purchases and acquisitions pursuant to state law and the rules, policies and procedures of the governing board having jurisdiction shall execute a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety therein, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-9. In lieu of separate bonds for such Buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of such bond or bonds shall be paid from funds appropriated to the Council, Commission and the governing boards. The Board of Risk and Insurance Management (BRIM) maintains blanket bonds for employees whose jobs require these bonds.

### **2.3.2 Delegation of Authority by the CPO/DOP to Others outside the Institution's Purchasing Department**

2.3.2.1 Subject to state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP may delegate purchasing authority to other appropriately trained individuals at the institution not employed within the institution's Purchasing Department, or to other departments within the institution. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.2.2 Factors that should be considered by the CPO/DOP in making the decision to delegate purchasing authority to individuals not employed within the institution's Purchasing Department, or to other departments within the institution, include, but are not limited to:

- a. The resources currently available to the CPO/DOP within the institution's Purchasing Department to adequately perform the purchasing functions that may be delegated;
- b. The procurement experience and expertise, and any specialized knowledge the potential delegee possesses that would be beneficial to the Purchasing Department in making purchases and acquisitions;
- c. The past experience of the potential delegee in exercising similar authority; and
- e. The degree of economy and efficiency to be achieved in meeting the institution's procurement needs if authority is delegated.

**2.4 Responsibility for Institutional Compliance When Purchasing Authority is Delegated**

2.4.1 Responsibility for ensuring institutional compliance with state law and the rules, policies and procedures of the Council/Commission and the governing board shall rest with and be the obligation of the CPO/DOP.

**2.5 Revocation of Delegated Authority**

2.5.1 The CPO/DOP may revoke delegated authority to an individual or department at his or her discretion. When delegated authority is revoked, the CPO/DOP shall, in writing, notify the Vice Chancellor for Administration, State Auditor and the Attorney General of the effective date of revocation.

## SECTION 3 SPECIFICATIONS AND REQUISITIONS

### 3.1 Specification

3.1.1 The purpose of a specification is to serve as the basis for obtaining the commodities (products) and services suitable for the needs of the Council, Commission, the governing board and the institution in a cost effective manner.

3.1.2 Determining the exact requirements (specifications) for products and services to perform a given function is one of the most important tasks in the procurement process. A specification must describe the type of product or service, the quality level, special requirements in design, performance, delivery and usage. A specification must not be restrictive and "lock-in/lock-out" a specific product, thus, limit competition, or is so vague as to allow a vendor to provide a lower quality product or service. A good specification is:

- a. Reasonable, legible, and clearly understandable to both the seller and the purchaser;
- b. Concise but complete; and
- c. Identifiable wherever possible with some brand or specification already on the market.

### 3.2 Types of Specifications

3.2.1 There are at least three types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor. These include:

- a. A "brand name or equivalent" specification is based on one or more of a manufacturer's commodity or product description(s), model number(s) and quality level(s). The manufacturer's commodity or product number(s) must be easily identified and available in a current publication that is readily available to most vendors. Commodity or product descriptions must be sufficiently detailed and specify only the required features needed for the application.
- b. A "performance" specification is based on the specific performance needs of the purchaser. A performance specification is less structured as to how the product is made, and more structured as to how well it performs. Life cycle cost for operating and maintaining the product should be an element of the specification.
- c. A "design" specification concentrates on the dimensional, physical and functional requirements of the item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's unique needs.

3.2.2 Combinations of the above may be used to communicate a clear specification to vendors. A performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or equivalent specification may be used to indicate a desired quality level.



### **3.3 Format of a Specification**

3.3.1 A specification should be presented in a specific manner each time a purchasing requisition is written. This format should include:

- a. The item number;
- b. Quantity and unit of measure, such as "case," "each," "dozen," etc.; and
- c. Description and name of the commodity or product if using a brand name or equivalent specification, followed by the manufacturer and model number. After the brand name, the words "or equivalent" should be inserted to inform vendors that alternate bids will be considered. The description should contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

3.3.2 Generally, the following language should not be included in a requisition:

- a. "No substitutes;"
- b. "Only nationally known brands accepted;" and
- c. "No alternatives will be accepted without prior approval of the requisitioner."

### **3.4 Standard Specifications**

3.4.1 Standard specifications are those developed by the institution's Purchasing Department. Standard specifications are also available from such organizations as the National Institute of Governmental Purchasing, the National Association of Purchasing Management and the National Association of Educational Buyers. The use of these standard specifications assures an acceptable quality that meets the needs of the institution.

### **3.5 Requisition**

3.5.1 A requisition is a document that is usually required by the CPO/DOP for the institution's Purchasing Department to initiate the purchasing process. It can result in the issuance of a Request for Quotations (RFQ), a Request for Bids (RFB), a Request for Proposals (RFP), a Request for Qualifications (RFQa), or a Request for Expressions of Interest or Information (REOI), and ultimately in the issuance of a purchase order to a vendor. Along with other required information and signatures, a requisition shall contain a suitable specification as described above.

3.5.2 When a need develops to purchase goods or services, a requisition should be prepared and forwarded to the institution's Purchasing Department with the required approval of the originating department unless the CPO/DOP determines that a requisition is not required.

## SECTION 4 VENDOR INFORMATION

### **4.1 Vendor Access to Public Business**

- 4.1.1 No qualified bidder should be arbitrarily or capriciously excluded from doing business with the Council, Commission, the governing boards or their institutions. Broad vendor participation should be fostered and encouraged. West Virginia businesses are actively encouraged to participate in higher education purchasing opportunities.

### **4.2 Vendor Registration**

- 4.2.1 West Virginia Code requires all vendors be registered with the West Virginia Department of Administration, Purchasing Division, prior to receiving a purchase order for competitive products and/or services exceeding \$25,000 from the Council, Commission, the governing boards and their institutions. An annual vendor registration fee, payable to the West Virginia Department of Administration, is required from vendors who have received a purchase order for competitive products and/or services exceeding \$25,000 per order. Those exempt from paying the fee are vendors supplying sole source (noncompetitive) products/services, or vendors receiving a purchase order in the aggregate amount of \$25,000 or less per order.

### **4.3 Resident Vendor Preference**

- 4.3.1 Preference for Resident Vendors: West Virginia vendors may claim an in-state resident vendor preference in accordance with [§5A-3-37](#) of the West Virginia Code on purchases of materials, supplies, equipment and printing that are competitively bid; however, this resident vendor preference is not applicable for services, including construction. Claims for the resident vendor preference must be made in writing by the vendor and must be submitted with the vendor's bid. Nonresident vendors who are certified small, women or minority owned shall be provided the same preference if requested.

### **4.4 Debarment**

- 4.4.1 As provided in West Virginia Code §5A-3-33a through §5A-3-33f [[click here for access to WV State Code §5A](#)], vendors that have been debarred are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time.
- 4.4.2 The Director of the State Purchasing Division has primary responsibility for administering the debarment process which includes: (a) obtaining a list of vendors declared ineligible under federal laws and regulations; (2) notification of all contracting officials for the state and its subdivisions regarding debarred vendors; (3) compiling and maintaining a current, consolidated list of all vendors that have been debarred, the period of debarment, and the reasons for debarment; (4) investigation complaints from the officials of the state and its subdivisions responsible for contracting with vendors for goods and services; (5) initiating and conducting debarment procedures; and (6) proposing rules for legislative approval for operation of the debarment process.
- 4.4.3 The code sections in subparagraph 4.4.1 apply to higher education purchases. Before a contract or purchase order is issued, the [debarment list](#) should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

4.4.4 Federal Debarment/Suspension: Vendor status shall be verified on [www.sam.gov](http://www.sam.gov). Screen prints of the search results shall be printed and kept in the vendor file for audit verification.

#### **4.5 Vendors in Default with Unemployment Compensation or Workers' Compensation**

4.5.1 [West Virginia State Code §21A-2-6](#) and the Bureau of Employment Programs' Exempt Legislative Rule ([Title 96, Series 1](#)) prohibit granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct trade, profession, or business to or with any employing unit whose account is in default with the Commissioner of the Bureau of Employment Programs with regard to the administration of Chapters 21A or 23 of the West Virginia Code.

4.5.2 Before a contract, purchase order or change order awarding, renewing or extending a contract is awarded or issued, the institution should check the Bureau of Employment Programs' database of vendors in default ([UC/WC Defaulted Accounts](#)).

#### **4.6 Awards**

4.6.1 After competitive bids are received for purchases greater than \$50,000, and after the bids have been evaluated, an award shall be made to the lowest responsible and responsive bidder. Neither personal preference nor "gold-plating" will be permitted. "Gold-plating" is the adding of additional features or functions by a bidder to a specified requirement for which no original request was made, and then expecting an award, at more dollars, claiming the product or service is better than the lowest responsible bidder who meets the specified requirement. If after a proper evaluation, an award is made to other than the lowest bidder; a justification must be written and retained for the purchasing file. The reasons given must be technically correct in terms of the bid specifications and not based on subjective or prejudicial reasons. The evaluator(s) must sign the justification.

#### **4.7 Incurring Costs of Bids or Proposals**

4.7.1 Neither the Council, Commission, nor the governing boards and their institutions shall be liable for any expense incurred by a vendor in preparation and/or presentation of a bid, proposal or quotation.

#### **4.8 Protests**

4.8.1 Vendors may file a written complaint or protest of a bid or planned award in accordance with [Section 7](#) of this Purchasing Procedures Manual.

#### **4.9 Suspension**

4.9.1 Vendors may be suspended from doing business with the Council, Commission, governing boards and their institutions for up to one year in accordance with [Section 8](#) of this Purchasing Procedures Manual. Vendor reconsideration or appeals are also discussed in that section.

**SECTION 5**  
**PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES AND PRINTING**

**5.1 General Information**

5.1.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services and printing shall be awarded by competitive bidding, except as provided below:

- a. Purchases not exceeding \$50,000;
- b. Competitive selection procedures for professional services;
- c. Sole source and single source procurement;
- d. Emergency procurement;
- e. Previously competed Federal, State and institutional contracts, and contracts issued by cooperative buying groups and consortia; and
- f. Essential services.

**5.2 Purchases not exceeding \$50,000**

5.2.1 The CPO/DOP of each institution shall establish institutional guidelines and procedures for purchases not exceeding \$50,000 per order. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines and procedures, and any modifications thereto, shall be approved by the president and filed with the Vice Chancellor for Administration.

5.2.2 While competition is encouraged, purchases in this category do not require competitive bids or quotations.

**5.3 Purchases Greater than \$50,000**

5.3.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services and printing greater than \$50,000.

5.3.2 Request for Bids (RFB)

5.3.2.1 The RFB is used to initiate a competitive sealed procurement by requesting bids from interested vendors/bidders. The RFB shall include the following:

- a. Instructions and information to bidders concerning the bid submission requirements, including the time and date for receipt of bids, the address of the location to which bids are to be delivered, the maximum time the bid shall be held by the bidder for acceptance by the institution, and other special information if needed;
- b. A description or specification for the item(s) to be purchased, evaluation factors,

shipping and performance requirements, and such inspection and acceptance requirements that are not detailed or included in the description or specification;

- c. The contract terms and conditions, including payment terms; delivery requirements; warranty requirements; and bonding or other security requirements, as applicable. The RFB may incorporate documents by reference, provided the Request for Bids specifies where such documents can be obtained or reviewed.

### 5.3.3 Bids

5.3.3.1 Bids shall be submitted by the bidder prior to the date and time of the bid opening on the prescribed form provided to the bidder. Substitutions may be made for the prescribed form if the substituted terms, conditions and/or provisions, if any, are approved by the CPO/DOP.

5.3.3.2 Bidders shall submit their bid to the location identified in the RFB prior to the specified date and time of the bid opening. A bid received after the required date and time is late and shall not be opened. Late bids should be returned to the bidder unopened.

5.3.3.3 The bid shall be signed by an authorized agent of the bidder who has the authority to bind the bidder to the bid price, terms, conditions and the requirements of the specification. The bid submitted must have an original signature. A corporate signature without an individual name shall not be construed an acceptable signature.

5.3.3.4 Facsimile transmitted bids are not acceptable for bids over \$50,000.

5.3.3.5 A bidder may make written modifications to a sealed bid prior to the bid opening provided they are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Modifications must be received by the CPO/DOP prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

### 5.3.4 Federal Procurement Standards

5.3.4.1 Non-Federal Entities Other than States: Non-federal entities other than states, including those operating federal programs as sub-recipients of states, must follow the procurement standards set out at 2 CFR Sections 200.318 through 200.326. They must use their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in 2 CFR Part 200.

A non-federal entity must:

- a. Meet the general procurement standards in 2 CFR Section 200.318, which include oversight of contractors' performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors and maintaining records to document the history of the procurement.
- b. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR Section 319.
- c. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR Sections 200.320 (a) and (b). Under the micro-purchase

method, the aggregate dollar amount does not exceed \$3,000 [\$2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)]. Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold. Micro-purchases may be awarded without soliciting competitive quotations in the non-federal entity considers the price to be reasonable [2 CFR Section 200.320(a)]. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified resources [2 CFR Section 200.320(b)].

- d. For acquisitions exceeding the simplified acquisition threshold, the nonfederal entity must use one of the following procurement methods: (a) the sealed bid method if the acquisition meets the criteria in 200.320(c); (b) the competitive proposals method under the conditions specified in 2 CFR Section 200.320(d); or (c) the non-competitive proposals method (i.e. solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR Section 200.320(f).
- e. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications [2 CFR Section 200.323(a)]. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used [2 CFR Section 200.323(d)].
- f. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR Section 200.326. These provisions are described in Appendix H to CFR Part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.”

### 5.3.5 Awards

5.3.5.1 An award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and the extended price. A vendor that has been debarred or is in default with Unemployment Compensation or Workers’ Compensation is not eligible to receive a purchase order/contract. See [paragraph 4.4](#) for more information about debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers’ Compensation. Also, see [subparagraph 5.3.17, Bid Evaluation and Award](#).

5.3.5.2 In some cases multiple and/or split awards may be made when it is determined to be in the best interest of the institution.

5.3.5.3 Occasionally, purchase orders may be issued which impose no obligation on the Council, Commission, the governing boards or their institutions to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements.

5.3.5.4 In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder.

### 5.3.6 Bidders Lists

5.3.6.1 Bidders lists may be compiled to provide the institution with the names of businesses that may

be interested in competing for various types of institutional contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing an institutional contract. The CPO/DOP or designee may draw from a bidders list a sufficient number of prospective bidders to ensure competition; however, the CPO/DOP or designee is not obligated to send an RFB to every vendor listed.

- 5.3.6.2 Businesses that fail to respond to a Request for Bids on consecutive procurements of similar items may be removed from the applicable bidders list. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.
- 5.3.6.3 Institutions should develop an in-state bidders list to ensure that West Virginia suppliers are exposed to as many bidding opportunities as possible. Institutions are also encouraged to utilize the West Virginia bid networks to the greatest extent practical.
- 5.3.6.4 An RFB should be mailed, furnished or otherwise made available to a sufficient number of bidders (at least three whenever possible) for the purpose of securing competition.
- 5.3.7 Advertising for Purchases Greater than \$50,000
  - 5.3.7.1 The CPO/DOP shall post, or make available, notices of competitive acquisitions and purchases exceeding \$50,000 in the institution's purchasing office no less than 5 calendar days prior to the date bids are due. The CPO/DOP shall ensure that the notice is available to the public during business hours.
  - 5.3.7.2 Institutions are encouraged to advertise in a newspaper of general circulation in the county or region where the purchase will be made. The advertisement should appear at least 15 calendar days prior to the date bids are due.
- 5.3.8 Bidding Time for Purchases Greater than \$50,000
  - 5.3.8.1 Bidding time for purchases greater than \$50,000 is the period of time between the date of advertising and posting in the institution's Purchasing Office and the date and time set for receipt of bids. The CPO/DOP shall set a reasonable bidding time for each purchase to afford bidders the opportunity to become aware of the RFB and to prepare and deliver their bid to the institution. The minimum bidding time permitted is 5 calendar days.
- 5.3.9 Bid Submission
  - 5.3.9.1 Bids shall be submitted on the RFB, or in some case, the form of proposal provided with it, in accordance with the instructions to bidders. The bidder, or his or her authorized agent, shall sign the bid and provide any other necessary and required information or attachments. The bid shall be submitted in a sealed opaque envelope clearly marked with the information requested in the RFB, such as the RFB number and the opening date and time, to clearly mark and distinguish it as a bid.
- 5.3.10 Pre-bid Conferences
  - 5.3.10.1 Pre-bid conferences may be held at the discretion of the CPO/DOP to explain the RFB which includes the procurement requirements, specifications, terms and conditions, and other relevant information concerning the bid or project. The pre-bid conference shall be announced to all prospective bidders known to the CPO/DOP to have received an RFB. The conference

should be held long enough after the RFB has been issued to allow bidders to become familiar with the specifications, terms and conditions, but sufficiently before the bid opening to allow bidders enough time to consider the conference information and results in preparing their bid.

5.3.10.2 If the pre-bid conference is advertised as mandatory, only those vendors who attend the conference are eligible to bid. A list of the attendees shall be made for the purchasing file. Addenda and supplemental information issued after the mandatory pre-bid conference should be distributed only to those vendors who are eligible to bid. Mandatory pre-bid conferences should be held when bidders need to be made aware of unique circumstances, conditions, and situations that cannot adequately be explained in the RFQs, RFB, RFP or REOI.

5.3.10.3 Nothing stated at the pre-bid conference shall change the RFB unless a change is made by written amendment called an "Addendum." A summary report of the conference may be provided to all those prospective bidders known to the CPO/DOP to have received an RFB. If a conference summary report is made, it shall be placed in the purchasing file and become a matter of public record.

5.3.11 Addendum to an RFB

5.3.11.1 An Addendum to an RFB, if needed, shall be issued by the CPO/DOP and it shall be identified as such. It shall reference the part(s) of the RFB amended or clarified and it shall be issued to all prospective bidders known by the CPO/DOP to have received an RFB.

5.3.11.2 An Addendum shall be issued by the CPO/DOP in time to allow prospective bidders to consider it in preparing their bids. If the date and time set for receipt of bids will not allow sufficient time for such preparation, then the bid opening date and time shall be extended by the Addendum to afford bidders sufficient time. The bidder shall acknowledge receipt of each Addendum in accordance with instructions in the bid documents.

5.3.11.3 An Addendum should be used for the following purposes:

- a. Make changes in the RFB such as changes in quantity, specifications, delivery schedule, opening time and date, terms and conditions, etc.;
- b. Correct defects or ambiguities; or
- c. Furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

5.3.12 Pre-opening Modifications or Withdrawal of Bids

5.3.12.1 Bids over \$50,000 may be modified or withdrawn by a bidder by written notice delivered in a sealed opaque envelope. Said notice must be clearly marked as a bid modification or withdrawal on the envelope, it must reference the bid being modified or withdrawn on the envelope, and it must be received at the location designated for receipt of bids in the RFB prior to the date and time set for bid opening. A bid may be modified or withdrawn by facsimile or electronic notice provided it is received at the location designated for receipt of bids prior to the date and time for receipt of bids. If a bid is modified, the modification shall be made in such a manner so as not to reveal the bid result until the bid is opened.

5.3.12.2 If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned



to the bidder.

5.3.12.3 All documents relating to the modification or withdrawal of a bid shall be made a part of the purchasing file.

5.3.13 Late Bids, Late Withdrawals, and Late Modifications

5.3.13.1 Any bid, withdrawal or modification received after the date and time set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered. The clock in the institution's Purchasing Office shall be considered the official timepiece used to determine whether the bid, withdrawal, or modification was late.

5.3.14 Receipt, Opening, and Recording of Bids

5.3.14.1 Upon its receipt, each bid and modification shall be time and date stamped but not opened and shall be stored in a secure place until the date and time set for bid opening.

5.3.14.2 Bids, modifications and withdrawals shall be opened publicly, in the presence of one or more witnesses who are employees of the institution at the time, date and location designated in the RFB. The name of each bidder, the bid price, and such other information as is deemed appropriate by the CPO/DOP, shall be read aloud or recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and signatures of the institutional witnesses present at the bid opening shall also be recorded on the bid tabulation or abstract. Following the opening the bids shall be available for public inspection. Bidders may request a copy of a bid or bids and the institution shall have a reasonable amount of time to make the requested copies. The CPO/DOP may also establish a reasonable charge for copying and handling costs.

5.3.15 Trade Secrets, Confidential or Proprietary Data

5.3.15.1 A bidder by designating certain information or data submitted with a bid as confidential, proprietary, or a trade secret may as a result establish an exception to the public inspection policy for the information or data so designated. Such designation shall be in accordance with [Chapter 29B of the West Virginia Code](#) and shall be made in writing by the bidder at the time the bid is submitted. A bidder may not claim this designation after bids have been opened. Information or data so designated shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, brands, model, or catalog numbers of the items offered, deliveries, and terms of payment shall be available for public inspection following the bid opening regardless of any designation to the contrary.

5.3.15.2 If an interested party wishes to inspect information or data designated by a bidder as confidential, proprietary or a trade secret, such request shall be made in writing. The CPO/DOP shall examine the information or data to determine the validity of any request for nondisclosure. The CPO/DOP shall inform the parties involved of his or her decision about disclosure in writing. If any of the parties object to the CPO/DOP's decision, a protest must be filed in writing within five calendar days after receiving the decision; otherwise, the CPO/DOP's decision shall be final. Following award of the contract or purchase order, the bids shall be open to public inspection, subject to any continuing prohibition on the disclosure of confidential, proprietary or trade secret information or data.

5.3.16 Mistakes in Bids

- 5.3.16.1 Mistakes Discovered Before the Bid Opening: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in "Pre-opening Modification or Withdrawal of Bids," [subparagraph 5.3.12](#).
- 5.3.16.2 Mistakes Discovered After the Bid Opening but Before Award: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding process, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. A bid correction or withdrawal because of a nonjudgmental mistake is permissible but only to the extent that it is not contrary to the interest of the institution or the fair treatment of other bidders. When the CPO/DOP knows or has reason to conclude that a mistake has been or may have been made, he or she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower (or higher) than the other bids submitted. Unit price shall be the governing factor if an error is made in extending the unit price. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth below are met:
- a. Minor Informalities or Irregularities: Minor informalities or irregularities, or significant mistakes that can be waived or corrected without prejudice to other bidders, which are evident after examining the bid, are considered matters of form rather than substance; that is, the effect on price, quantity, quality, or terms and conditions is negligible. The CPO/DOP may waive such informalities or irregularities or allow the bidder to correct such mistakes, depending on which is in the best interest of the institution. An example is the failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound. Another example is the lack of specifications on alternate bids. Additional specifications may be requested to make an accurate determination.
  - b. Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
  - c. Mistakes Where Intended Correct Bid Is Not Evident: A bidder may be permitted to withdraw a low bid if: (1) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or (2) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates the mistake.
- 5.3.16.3 The CPO/DOP may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist:
- a. An error was made that materially affected the bid or proposal;
  - b. Rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services and/or printing at a reduced cost; and
  - c. Enforcement of the part of the bid or proposal in error would be unconscionable.
- 5.3.16.4 Mistakes Discovered After Award: Mistakes shall not be corrected after award of the contract except where the CPO/DOP makes a written determination that it would be unconscionable

not to allow the mistake to be corrected.

- 5.3.16.5 CPO/DOP's Determination: When a bid is corrected or withdrawn, or correction or withdrawal is denied, the CPO/DOP shall prepare a written determination showing that the relief was granted or denied in accordance with this Purchasing Procedures Manual.
- 5.3.17 Bid Evaluation and Award
- 5.3.17.1 The contract is to be awarded to the lowest responsible and responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the RFB.
- 5.3.17.2 A bid may be rejected if: (a) the product quoted does not meet compatibility requirements; (b) where in certain circumstances a partial bid is not acceptable; (c) when timely delivery requirements are significant to the purchase; and/or (d) when the bidder fails to comply with the stated terms and conditions.
- 5.3.17.3 Following determination of product acceptability, if any is required; bids will be evaluated to determine the lowest responsible and responsive bidder. Consideration shall be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery and other terms and conditions considered prudent, as set forth in the RFB. In some cases, multiple or split awards may be made if determined by the CPO/DOP to be in the best interest of the institution.
- 5.3.17.4 Nothing in this section shall preclude an award to a bidder submitting a higher quality product or item than that designated in the RFB if such bidder submitted the lowest bid.
- 5.3.17.5 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and the Bureau of Employment programs' default database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.
- 5.3.17.6 Negotiation with a bidder or bidders is not permitted; however, clarifications that do not alter a bid are permitted.
- 5.3.18 Low Tie Bids
- 5.3.18.1 Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the RFB.
- 5.3.18.2 At the discretion of the CPO/DOP, award may be made in any permissible manner that will discourage tie bids. When tie bids occur, the tie will be broken and an award made by allowing the tie bidders to make a "best and final offer," by a flip of a coin, or any other impartial method deemed prudent by the CPO/DOP.
- 5.3.19 Documentation of Award
- 5.3.19.1 Following an award, if it is not apparent on the face of the bid, a record showing the basis for determining the successful bid shall be made a part of the purchasing file, and the successful

bid shall be marked as the successful bid.

### 5.3.20 Publicizing Awards

5.3.20.1 Written notice via letter, memorandum, electronic transmission or a purchase order shall be sent to the successful bidder. Notice of the award shall be posted or otherwise made available in the institution's purchasing office for competitive transactions greater than \$50,000.

## 5.4 Request for Proposals (RFP)

5.4.1 Competitive sealed bidding is the preferred method of procurement; however, if the use of competitive sealed bidding is either not practicable or not advantageous to the institution, a contract may be entered into by an RFP.

5.4.2 The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. An RFP may be practicable, that is reasonably possible, but not necessarily advantageous, that is, in the institution's best interest.

5.4.3 The key element in determining advantageousness will be the need for flexibility. The RFP method allows for the following:

- a. It permits discussions with competing offeror and changes in their proposals, including price; and
- b. It allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

5.4.4 Competitive sealed bidding normally requires award to a low bidder who agrees in its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the RFB. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- a. Whether the contract needs to be other than a fixed-type;
- b. Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- c. Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- d. Whether the award may need to be based upon a comparative evaluation, as stated in the RFP, or differing price, quality, and contractual factors in order to determine the most advantageous offering. Quality factors include technical and performance capability and the content of the technical proposal; and
- e. Whether the primary consideration in determining award may not be the price.

5.4.5 An important difference between Requests for Proposals and competitive sealed bidding is the finality of initial offers. Under a RFP, alterations in the nature of the proposal and/or in prices may be made after proposals are opened.

5.4.6 The RFP method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the RFP. The vendor responds to the RFP with a proposal identifying the intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in the RFP, along with pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to an award. Requests for Proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. RFPs are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

## **5.5 Content of the RFP**

5.5.1 An RFP shall be prepared in accordance with [subparagraph 5.3.2](#), RFBs, and may also include:

- a. A statement that discussions may be held with offerors who submit proposals that are under further or final consideration for award, but that proposals may be accepted without such discussions; and
- b. A statement of when and how price should be submitted.

## **5.6 Proposal Preparation Time**

5.6.1 Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. Thirty calendar days is recommended but the CPO/DOP shall provide not less than 14 calendar days.

## **5.7 Public Notice (Advertising and Posting)**

5.7.1 Public notice shall be given by distributing the RFP in the same manner provided for distributing an RFB in [subparagraph 5.3.6](#), Advertising for Bids \$50,000 and above.

## **5.8 Pre-proposal Conferences**

5.8.1 Pre-proposal conferences may be conducted in accordance with [subparagraph 5.3.9](#), Pre-bid Conferences. Any such conference should be held prior to submission of initial proposals.

## **5.9 Addendum to an RFP**

5.9.1 An addendum to an RFP may be made in accordance with [subparagraph 5.3.10](#), Addendum to an RFB, prior to the date and time for submission of proposals.

## **5.10 Pre-opening Modification or Withdrawal of Proposals**

5.10.1 Proposals may be modified or withdrawn prior to the established date and time for the proposal opening in accordance with [subparagraph 5.3.11](#), Pre-opening Modification or Withdrawal of Bids.

## **5.11 Late Proposals, Late Withdrawals and Late Modifications**

5.11.1 Any proposal, withdrawal, or modification received after the established date and time due at the place designated for receipt of proposals is late.

## **5.12 Receipt and Registration of Proposals**

5.12.1 Packages containing proposals and modifications shall be date and time stamped upon receipt and held in a secure place until the established date and time due. Proposals shall be opened in the presence of one or more witnesses who are employees of the institution. After the date established for receipt of proposals, a register of all proposals shall be prepared which shall include the name and address of each offeror, the number of modifications received, if any, and a description sufficient to identify the goods or services offered. Proposals and modifications shall be shown only to institutional personnel having a legitimate interest in them prior to award of a contract.

## **5.13 Evaluation of Proposals**

5.13.1 The RFP shall state all of the evaluation factors, their relative importance, and how the fee or price will be evaluated in relation to the other evaluative criteria.

5.13.2 The evaluation of proposals shall be based on the evaluation factors set forth in the RFP. Numerical rating systems may be used but are not required. Factors or evaluative criteria not stated in the RFP shall not be considered in evaluating the proposals.

5.13.3 For the purpose of conducting discussions with individual offerors, proposals shall be initially classified as acceptable, potentially acceptable, or unacceptable.

## **5.14 Proposal Discussions with Individual Offerors**

5.14.1 The term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors who submitted unacceptable proposals.

5.14.2 Discussions or interviews may be held to promote understanding of the institution's requirements and the offerors' proposals, and to facilitate arriving at a contract that will be most advantageous to the institution taking into consideration price and the other evaluation factors set forth in the RFP.

5.14.3 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, interviews and revisions of proposals. The CPO/DOP should establish procedures and schedules for conducting discussions and interviews. If during discussions and interviews, there is a need for a substantial clarification or a change in the RFP, it may be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's proposal to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

5.14.4 Best and Final Offers: The CPO/DOP shall establish a common date and time for the submission of best and final offers if necessary. Best and final offers shall be submitted only once; provided, however, the CPO/DOP may make a written determination that it is in the institution's best interest to conduct additional discussions or change the institution's requirements and require another submission of best and final offers. Otherwise, no discussion

of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

## **5.15 Mistakes in Proposals**

5.15.1 Mistakes Discovered Before An Award: When the CPO/DOP knows or has reason to conclude before an award that a mistake has been made in a proposal, he or she should request the offeror to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn during any discussions or interviews that are held, or if the conditions set forth below are met. The following presents four situations in which mistakes in proposals are discovered after receipt of proposals but before award:

- a. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the date and time set for receipt for best and final offers.
- b. Minor informalities, unless otherwise corrected by an offeror as provided herein, shall be treated as they are under competitive sealed bidding in [subparagraph 5.3.15](#), Mistakes in Bids, [clause 5.3.15.3](#).
- c. If discussions are not held or if the best and final offers upon which the award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
  1. The mistake and the intended correct offer are clearly evident on the face of the proposal, in this event the proposal may not be withdrawn; or
  2. The mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of the other offerors.
- d. If discussions or interviews are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
  1. The mistake is clearly evident on the face of the proposal and the intended correct offer is not;
  2. The offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer; or
  3. The offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

5.15.2 Mistakes Discovered After Award: Mistakes discovered after an award shall not be corrected after the contract is issued except when the CPO/DOP finds it would be unconscionable not to allow the mistake to be corrected.

5.15.3 Documentation of Determination: When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied. The CPO/DOP shall prepare the determination, except when the decision was made under the [clause 5.3.15.5, Minor Informalities or Irregularities](#). In this situation, the Buyer handling the procurement may prepare the determination.

## **5.16 Award**

5.16.1 The CPO/DOP or designee shall make a written determination showing the basis on which the award was found to be most advantageous to the institution based on the factors and evaluative criteria set forth in the RFP.

5.16.2 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and Bureau of Employment Programs' database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

## **5.17 Competitive Selection Procedures for Professional Services**

5.17.1 These procedures apply to procurement of the services of accountants, land surveyors, clergy, physicians, lawyers, or others as applicable. Except as authorized under Sole/Single Source Procurement or Emergency Procurement, formal competitive selection procedures shall be used for procurement of professional services in excess of \$50,000. For the services of architects and engineers, please refer to [subparagraph 5.17.4](#).

5.17.2 The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals (RFPs); however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.

5.17.3 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation

5.17.4 Hiring Architects and Engineers: The process for hiring architects and engineers is set forth in [Chapter 5G of the West Virginia Code](#). The Legislature has decided that it is the policy of the state, and its political subdivisions, to procure architectural or engineering services or both on the basis of demonstrated competence and qualification for the type of professional services required. The contracts for architectural and engineering services have been approved by the Attorney General (See Appendix A)

5.17.4.1 Procurement of Architectural and Engineering Services for Projects Estimated to Cost \$250,000 and Greater

- a. Firms engaged in the lawful practice of the profession shall be encouraged to submit expressions of interest. See [paragraph 5.19](#) for what to include in a Request for Expressions of Interest.



- b. All such jobs (projects) shall be announced by a Class II legal advertisement which requires publishing in a qualified newspaper once a week for two successive weeks. "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication. For additional information refer to [West Virginia Code §59-3](#). In addition, a notice should be provided to the West Virginia Chapter of the American Institute of Architects ([AIA West Virginia](#)).
- c. A committee of three to five representatives of the institution initiating the request shall evaluate the statements of qualifications and performance data and other materials submitted by interested firms and select at least three firms that, in their opinion, are best qualified to perform the desired service.
- d. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment.
- e. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services.
- f. Should the institution be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.
- g. Should all negotiations fail, the institution may start the Request for Expressions of Interest process over.

5.17.4.2 Procurement of Architectural and Engineering Services for Projects Estimated to Cost Less than \$250,000

- a. In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000, the institution shall seek competition. The institution shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract.
- b. If a judgment is made by the CPO/DOP that special circumstances exist and that seeking competition is not practical, the institution may select a firm on the basis of previous satisfactory performance and knowledge of the institution's facilities and needs. After selection, the institution and firm shall develop the scope of services required and negotiate a fee and a contract.

**5.18 Public Notice in Competitive Selection Procedures (Advertising and Posting)**

5.18.1 Notice of the need for professional services shall be made by the CPO/DOP in the form of an

RFP or Request for Expressions of Interest. Adequate public notice shall be given as provided in [paragraph 5.7](#), and such notice shall also consist of distributing the RFP or REOI to persons who are or may be interested in performing the services required by the proposed contract. In the case of architectural and engineering services, notice shall be as described in [subparagraph 5.17.3](#).

## **5.19 RFP or REOI**

5.19.1 The RFP or REOI shall be in the form specified by the CPO/DOP and shall contain at least the following information:

- a. The type of services required;
- b. A description of the work involved or scope of the project;
- c. An estimate of when and for how long the services will be required;
- d. The type of contract to be used;
- e. A date by which proposals or expressions of interest for the performance of the services shall be submitted;
- f. A statement that the proposals or expressions of interest shall be in writing;
- g. A statement that offerors may designate those portions that contains trade secrets or other proprietary data that may remain confidential;
- h. A request for total cost and price if the institution deems it necessary for budgeting considerations, except for architectural and engineering services. As stipulated in the State Code, fee information is not to be requested for architectural and engineering services in the Request of Expressions of Interest;
- i. A statement of the minimum information that the proposal or expression of interest should contain, includes the following:
  1. The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
  2. The age of the offeror's business and average number of employees over a previous period of time, if deemed relevant by the CPO/DOP, and specified in the RFP or REOI;
  3. The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
  4. A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP or REOI; and
  5. A plan, giving as much detail as practical, explaining how the services will be performed; and

- j. The factors and evaluative criteria to be used in the evaluation and selection process and their relative importance.

5.19.2 Proposals shall be evaluated only on the basis of evaluation factors and criteria stated in the RFP or REOI. The following factors and criteria may be appropriate to use in conducting the evaluation. The relative importance of these and other factors and criteria will vary according to the type of service needed. The following are suggested as minimum factors or criteria:

- a. The plan for performing the required service;
- b. Ability to timely perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- c. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- d. A record of past performance in successfully providing or performing similar work and services.

5.19.3 Preproposal conferences, as appropriate, may be conducted. Such a conference may be held any time prior to the date established for submission of proposals or expressions of interest.

## **5.20 Receipt and Handling of Proposals and Expressions of Interest**

5.20.1 Receiving, Opening and Registration: Proposals, expressions of interest and modifications shall be date and time stamped upon receipt and held in a secure place until the established date and time due. Proposals or expressions of interest shall not be disclosed to unauthorized persons prior to an award, but shall be opened in the presence of one or more witnesses who are employees of the institution. A register of proposals or expressions of interest shall be prepared which shall include the name and address of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered.

5.20.2 Requests for Nondisclosure of Data: If an offeror has requested in writing, at the time the proposal or expression of interest is submitted, nondisclosure of trade secrets and other proprietary or confidential data, as provided in [Chapter 29B of the West Virginia Code](#), the CPO/DOP or designee shall examine the request to determine its validity prior to entering into negotiations. If the parties do not agree as to the disclosure of data in the contract, the CPO/DOP conducting the procurement, or a designee, shall inform the offeror in writing what portion of the proposal shall be disclosed and that, unless the offeror withdraws the proposal or protests in writing, the proposal will be so disclosed.

## **5.21 Selection of the Best Qualified Offerors**

5.21.1 After evaluating the proposals or expressions of interest based on the stated evaluative factors or criteria and after validating qualifications, the CPO/DOP or designee shall select in the order of their respective qualification rankings no fewer than three acceptable offers, or a lesser number if less than three acceptable proposals were received, that are deemed to be the best qualified to provide the required services. If discussions or interviews are to be held, the CPO/DOP or designee shall schedule a date, time and place and notify the selected offerors; otherwise, the CPO/DOP or designee shall begin fee and contract negotiations, if any are

required, with the highest ranked offeror.

## **5.22 Discussions and Interviews**

5.22.1 The CPO/DOP, or designee, managing the procurement shall evaluate all proposals submitted and may hold discussions or interviews with any offeror. The purpose of such discussions shall be to:

- a. Determine in greater detail each offeror's qualifications; and/or
- b. Explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

5.22.2 During or following the interviews, the offerors are to be ranked by the evaluation committee from the highest to the least qualified.

5.22.3 The CPO/DOP or designee shall not disclose information derived from proposals submitted by other offerors during discussions and interviews, and other employees of the institution on the evaluation committee shall not disclose information contained in any proposal until after an award has been made. After the award, all proposals or expressions of interest shall be open to public inspection, except for trade secrets, proprietary and confidential data and information.

5.22.4 Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

## **5.23 Negotiation and Award of Contract**

5.23.1 The CPO/DOP or designee managing the procurement shall award a contract to the best qualified offeror as determined during the selection process for the required services at a mutually acceptable fee.

5.23.2 If fee and contract negotiations are necessary, the CPO/DOP or designee shall begin such negotiations with the best qualified offeror. Elements of negotiation may include but are not limited to:

- a. Making certain that the offeror and the institution have a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;
- b. Arriving at a mutually acceptable agreement, and establishing a fee and reimbursable expenses; and
- c. Determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time.

5.23.3 If negotiations with the best qualified offeror cannot be satisfactorily concluded, the CPO/DOP or designee shall so state in writing giving the reasons therefore and shall place this document in the purchasing file. The CPO/DOP or designee shall advise such offeror of the termination of negotiations which shall be confirmed by written notice.

5.23.4 Upon failure to negotiate a contract with the best qualified offeror, the CPO/DOP or designee

may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated and commenced with the next most qualified offeror.

5.23.5 If, after failing to negotiate an agreement with the best qualified offeror, the CPO/DOP may cancel the procurement at any time and begin the process again if he or she determines it is in the best interest of the institution to do so.

5.23.6 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation.

## **5.24 Notice of Award**

5.24.1 Written notice of an award shall be public information and made a part of the purchasing file.

## **5.25 Memorandum of Evaluation, Negotiation and Award**

5.25.1 At the conclusion of negotiations, if any, resulting in a contract award, the CPO/DOP or designee managing the procurement shall prepare a memorandum setting forth the basis of the award. This memorandum shall include but not necessarily be limited to:

- a. How the evaluation factors stated in the RFP or REOI were applied to determine the best qualified offeror; and
- b. The principal elements of the negotiation, if any, including significant considerations relating to price and other terms of the contract.

## **5.26 Cancellation of Solicitations; Rejection of Bids, Proposals or Expressions of Interest**

5.26.1 These guidelines are intended to provide information to the CPO/DOP concerning cancellation of any solicitations whether issued under competitive sealed bidding, RFPs or REOI, small purchases, or any other procurement method; and rejection of bids, proposals, or expressions of interest in whole or in part.

5.26.2 Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for information purposes only.

5.26.3 Preparing and distributing a solicitation requires the expenditure of time and funds. Businesses likewise incur expenses in examining and responding to solicitations. Although issuance of a solicitation does not compel award of a contract, a solicitation should be canceled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the institution's best interest.

5.26.4 Cancellation of a Solicitation

5.26.4.1 Each solicitation issued by the institution shall state that the solicitation may be canceled.

5.26.4.2 Cancellation Prior to Opening: A solicitation may be canceled in whole or in part when the CPO/DOP determines in writing that such action is in the institution's best interest for reasons including but not limited to:

- a. The institution no longer requires the materials, supplies, equipment, services, printing, repairs and alterations or construction;
- b. The institution no longer can reasonably expect to fund the procurement; or
- c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

5.26.4.3 Cancellation after the Opening: Prior to award, all bids, proposals or expressions of interest may be rejected in whole or in part when the CPO/DOP determines in writing that such action is in the institution's best interest for reasons including but not limited to:

- a. The materials, supplies, equipment, services, printing, repairs and alterations, or construction being procured are no longer required;
- b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
- c. The solicitation did not provide for consideration of all factors of significance to the institution;
- d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- e. All otherwise acceptable bids, proposals or expressions of interest received are at clearly unreasonable prices; or
- f. There is reason to believe that the bids, proposals or expressions of interest may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

5.26.5 Rejection of Individual Bids or Proposals

5.26.5.1 Each solicitation issued by the institution shall provide that any quotation, bid, proposal or expression of interest may be rejected in whole or in part when it is in the best interest of the institution as provided in this Purchasing Procedures Manual.

5.26.5.2 Reasons for Rejection: Reasons for rejecting a quotation, bid, proposal or expression of interest include but are not limited to:

- a. The business that submitted the quotation, bid, proposal or expression of interest is identified as not being a responsible firm;
- b. The quotation, bid, proposal or expression of interest is not responsive, that is, it does not conform in all material respects to the RFQ, the RFB, the RFP or the REOI;
- c. The materials, supplies, equipment, service, printing, repair and alteration, or construction offered is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptable criteria set forth; and
- d. The quoted or proposed price or fee is clearly unreasonable.

5.26.6 Notice of Cancellation or Rejection to Vendors

5.26.6.1 When a solicitation is canceled, notice of cancellation shall be sent to all businesses solicited or known by the CPO/DOP or designee to have received an RFQ, an RFB, an RFP or an REOI. The notice of cancellation shall:

- a. Identify the solicitation;
- b. Briefly explain the reason for cancellation; and
- c. When appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar materials, supplies, equipment, services, printing, repairs and alterations or construction.

5.26.7 Documentation of Cancellation or Rejection

5.26.7.1 The reason(s) for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

**5.27 Disposition of Quotations, Bids, Proposals or Expressions of Interest**

5.27.1 When quotations, bids, proposals or expressions of interest are rejected, or a solicitation is canceled after quotations, bids, proposals or expressions of interest are received; those which have been opened shall be retained in the procurement file. If they are unopened, they shall be returned to the bidders or offerors upon request, or otherwise retained in the procurement file.

**5.28 Sole/Single Source Procurement**

5.28.1 Sole source and single source procurement are not permissible unless the materials, supplies, equipment, services and printing needed are available from only one supplier. A requirement for a particular proprietary item does not justify sole or single source procurement if there is more than one potential bidder or offeror for that item. Single source procurement is permitted only when the goods and services are of such a unique nature that they cannot be acquired from any other source. The following are examples of circumstances that could necessitate sole/single source procurement:

- a. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. The item cannot be obtained through ordinary purchasing procedures and methods;
- c. The item is available from a state spending unit or other institution with preference under the West Virginia Code; and
- d. Where specific and unique items are called for on a grant or contract.

5.28.2 The determination as to whether procurement shall be made as a sole/single source shall be made by the CPO/DOP. Such determination and the basis therefore shall be in writing. The CPO/DOP may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request that procurement be restricted to one potential supplier shall be accompanied by an explanation as

to why no other will be suitable or acceptable to meet the need.

## **5.29 Emergency Procurement**

- 5.29.1 Emergency Purchases Using a Purchase Order: Emergency purchases may be made when there exists a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, loss of essential function of the institution, or to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the purchase file and shall be open to public inspection. Emergency procurement shall be limited to those materials, supplies, equipment, services, printing, repairs and alterations, or construction items necessary to meet the emergency.
- 5.29.2 Emergency purchases exceeding \$50,000 that requires a purchase order must receive the prior approval of the CPO/DOP or designee.
- 5.29.3 Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit.
- 5.29.4 Emergency Purchases Using the State Purchase Card: As provided in [West Virginia Code §18B-5-9](#), the Council, Commission and each institution shall maintain one purchase card for use only in and for situations declared to be an emergency by the president and approved by the Chancellor. Such emergencies shall include but not be limited to (1) partial or total destruction of a campus facility; (2) loss of a critical component of utility infrastructure; (3) heating; (4) ventilation or air conditioning failure in an essential academic building; (5) loss of campus road, parking lot or campus entrance; or (6) local, regional, or national emergency situation that has a direct impact on the campus. Use of the purchase card for emergency purchases shall be governed by state law and the rules and procedures issued by the State Auditor.

## **5.30 Open End Contracts, Federal Contracts, Contracts Issued by Cooperative Buying Groups and Consortia, Bulk Purchase Contracts and Contracts Issued through Reverse Bidding and Electronic Marketplaces**

- 5.30.1 The Council, Commission, the governing boards and their institutions may enter into open-end contracts, bulk purchase contracts and contracts issued through reverse bidding and electronic marketplaces for materials, supplies, equipment, services and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisition may be made from these contracts without securing any other quotations, bids, proposals, or expressions of interest.
- 5.30.2 The Council, Commission, the governing boards and their institutions may, without securing quotations, bids, proposals or expressions of interest, make purchases from the federal government and from federal government contracts, and contracts issued by cooperative buying groups and consortia, if the materials, supplies, equipment, services, and printing to be purchased are available from the federal government and from federal government contracts, and if this is the most financially advantageous manner of making such purchases.

## **5.31 Motor Vehicle Purchases**

- 5.31.1 Purchase and leasing of motor vehicles shall be consistent with state law, the rules, policies



and procedures of the Council, Commission and the governing board having jurisdiction. The Vice Chancellor for Administration may issue additional policies and procedures if deemed appropriate to manage the purchase and lease of vehicles.

## **5.32 Leases for Grounds, Buildings, Office Space or Other Space**

5.32.1 As provided in [West Virginia Code §18B](#), the Council, Commission and the governing boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space, the rental of which is required by the Council, Commission or the governing board for the institutions under their jurisdiction. The lease agreement used should be the agreement preapproved by the Attorney General, without modification to the terms and conditions (see Appendix B). If the preapproved lease agreement is not used, or there are modifications to the terms and conditions of the preapproved agreement, the agreement must be approved “as to form” by the Attorney General.

5.32.2 The chief executive officer of the Council, Commission or an institution shall certify the following before entering into a lease agreement:

- a. That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the Council, Commission or institution;
- b. That the Council, Commission or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and
- c. That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the Council, Commission or the institution.

5.32.3 The Council, Commission and the governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year, but not to exceed 40 years. Any purchases of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Any such lease shall contain, in substance, all the following provisions:

- a. That the Council, Commission or the governing board, as lessee, have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;
- b. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds or otherwise acts to impair the lease or cause it to be canceled; and
- c. That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless the Council, Commission or the governing board before the end of the then-current fiscal year cancels it.

5.32.4 The Council, Commission or an institution which has leased any grounds, buildings, office space or other space may not order or make permanent changes of any type, unless the Council, Commission or the governing board, as appropriate, has first determined that the change is

necessary for the proper, efficient and economically sound operation of the institution. A "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

5.32.5 The chief executive officer of the Council, Commission or the institution may sign leases and other instruments for grounds, buildings, office or other space, once approved by the Council, Commission or governing board. Any lease or instrument exceeding \$100,000 annually shall be approved "as to form" by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

### **5.33 Lease-Purchases of Capital Improvements and Equipment**

5.33.1 As provided in [West Virginia Code §18B-19-11](#), the Council, Commission and governing boards may enter into lease-purchase agreements for capital improvements and equipment. As provided in the Council/Commission's procedural rule for [Capital Project Management, Title 133, Series 12](#), the Council or Commission, in addition to the governing board, must grant prior approval for lease-purchase agreements of \$1,000,000 and above. Lease-purchase agreements shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Lease-purchase agreements less than \$1,000,000 shall be approved according to the procedures of the governing board and do not require Council or Commission approval.

5.33.2 The lease-purchase agreement shall be the agreement preapproved by the Attorney General, without modification to the terms and conditions (See Appendix B). If the terms and conditions of the preapproved agreement are modified or if a different agreement is used, then "approval as to form" is required by the Attorney General. In addition, a lease-purchase agreement, which exceeds \$100,000 in total, shall be approved by the Attorney General. Any agreement exceeding \$25,000 and takes more than six months to fulfill shall be filed with the State Auditor.

5.33.3 A lease-purchase arrangement shall constitute a special obligation of the State of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the Council, Commission or institution and must be cancelable at the option of the Council, Commission, governing board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof; and such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the Attorney General. Proposals for any arrangement must be requested in accordance with the requirements of state law and any rules or guidelines of the Council or Commission. The interest component of any lease-purchase obligation shall be exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also shall be exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the Council, Commission, governing board or the president of the institution as a bank-

qualified obligation.

### **5.34 Purchasing File**

5.34.1 The CPO/DOP shall maintain a purchasing file for each procurement or acquisition that shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to:

- a. The RFQ, RFP or REOI used to solicit the procurement, any Addenda thereto, and any pre-bid or preproposal conference summary reports;
- b. The quotations, bids, proposals or expressions of interest received in response to a solicitation; however, an unopened quotation, bid, proposal or expression of interest and documents or portions of documents in the procurement file stamped or marked “proprietary” in accordance with the [West Virginia Code, Chapter 29B](#), shall not be considered a public document or record;
- c. A bid summary or register of proposals or expressions of interest, and identification and certification of the successful quotation, bid, proposal or expression of interest;
- d. Why any quotation, bid, proposal or expression of interest is rejected in whole or in part;
- e. Why a solicitation was canceled;
- f. Justification for award to other than the lowest vendor; and
- g. Vendor protests or complaints.

5.34.2 Except as provided above, the purchasing file shall be a public record open to inspection during normal business hours.

5.34.3 No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor; however, those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication, may be destroyed without the written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

### **5.35 Vendor's Rights and Duties**

5.35.1 Each vendor shall be solely responsible for delivery of his or her quotation, bid, proposal, expression of interest, modification or cancellation to the designated location for receipt of quotations, bids, proposals or expressions of interest bids or proposals prior to the specified date and time of the bid or proposal opening; otherwise, it shall be considered late and returned unopened to the vendor.

5.35.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.

5.35.3 Any changes made by the vendor in the specifications listed in the RFQ, RFB, RFP or REOI must be clearly identified. If the changes are not clearly identified, it will be assumed that items and services offered meet the specifications in all respects.

- 5.35.4 Vendors are solely responsible for the accuracy of the information in their quotation, bid, proposal and expression of interest and on the envelope used to submit said quotation, bid, proposal or expression of interest.
- 5.35.5 All sales to the Council, Commission, the governing boards and their institutions are exempt from consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.
- 5.35.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration of suspension, in accordance with the requirements of Section 7 and Section 8 of this Purchasing Procedures Manual; otherwise, they shall be waived.

**SECTION 6**  
**APPROVAL AS TO FORM BY THE ATTORNEY GENERAL, STANDARD FORMS, TERMS AND**  
**CONDITIONS, AND FILING WITH THE STATE AUDITOR**

6.1            Signing Contracts in the Name of the Institution

6.1.1        Contracts entered into pursuant to WV Code §18B5-4 through 5-7 shall be signed in the name of the institution by the institution's CPO/DOP or by another person in the employ of the institution who is lawfully authorized to sign contracts and has signature authority for the institution.

6.2            Standardized Contract Forms

6.2.1        The following documents have been reviewed by the Attorney General and suggested for use by higher education institutions; however, usage of these forms does not preclude the need for the Attorney General's Office signature of approval of all contracts "as to form".

- a.        The WV-96 State of West Virginia Addendum to Vendor's Standard Contractual Forms. This is to be utilized when the vendor desires to incorporate one or more forms it created into the Contract.  
(<https://www.state.wv.us/admin/purchase/vrc/wv96.pdf> )
- b.        Purchasing Division approved\_AIA Documents A201 and B101. These forms are to be used for construction and architectural/engineering contracts  
(<https://www.state.wv.us/admin/purchase/aia/default.html> )
- c.        Purchasing Division Official Bond Forms including bid bond, labor and material payment bond, maintenance bond and performance bonds.  
(<https://www.state.wv.us/admin/purchase/forms2.html> )
- d.        Higher Education Policy Commission Lease and Lease Agreement Purchase Forms (see Appendix B).

6.3            Attorney General Approval of Contracts

6.3.1        The following higher education documents require the Attorney General's approval "as to form":

- a.        Contracts for legal services.
- b.        Contracts or change orders to contracts in which the vendor has proposed terms and conditions which they desire to add to the contract/purchase order. The institution should present the WV-96 State of West Virginia Addendum to Vendor's Standard Contractual Forms to the vendor for signature prior to submitting the contract to the Attorney General's Office for approval.
- c.        Contracts dealing with the following terms should be reviewed by in-house

legal staff, institution privacy officers and/or the Commission's legal counsel prior to submission to the Attorney General for approval.

1. Order of Precedence
2. Warranties
3. Limitation of Liability
4. Indemnification
5. Confidentiality
6. Personally Identifiable Information (PII) including retention, deletion and protection of the data
7. Web/cloud based services
8. Energy Savings Contracts

c. Lease-purchase agreements for capital improvements.

d. Leases or other instruments for grounds, buildings, office or other space.

#### 6.4 State Auditor Filing Requirements

6.4.1 A contract that exceeds \$50,000 shall be filed with the State Auditor.

6.4.2 Upon request of the State Auditor, the CPO/DOP shall make all contracts, available to the State Auditor for inspection, including those that do not exceed \$50,000.

**SECTION 7**  
**COMPLAINTS, PROTESTS AND RECONSIDERATION**

**7.1 Complaints**

7.1.1 Complaints to the CPO/DOP, a Buyer or other designee about the procurement activities or actions of an institution may be made at any time, either verbally or in writing. If the complaint is made in writing, it should identify the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, the reason for the complaint, and the action the complainant is seeking from the institution.

7.1.2 A complaint shall not be considered a protest, but an informal expression of dissatisfaction by the complainant about the procurement activities or actions of an institution. Complaints shall not be considered sufficient reason to delay or postpone evaluation and award of a contract or purchase order. Complainants should seek resolution of their complaint with the CPO/DOP, Buyer, or other designee.

**7.2 Protests**

7.2.1 Protests based on specifications or improprieties in any type of solicitation that are apparent, or should have been apparent prior to the bid or proposal opening date, must be filed no later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following award of the contract as posted or otherwise made available in the institution's Purchasing Office for competitive transactions above \$25,000. Information regarding awards may be obtained from the institution's Purchasing Office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner, so that the protest can be made within the stated time limit.

7.2.2 Protests filed prior to an award shall be resolved in accordance with the Purchasing Rule of the Council/Commission and this Purchasing Procedures Manual before an award is made. When a protest has been filed after an award, the CPO/DOP may, after consulting with the Chief Financial Officer and/or president, or in the case of the Council, Commission or West Virginia Network for Educational Telecomputing, with the Vice Chancellor for Administration, allow the successful vendor to proceed with fulfilling the contract or order without delay if he or she determines that it is necessary to protect substantial interests of the institution.

7.2.3 A protest must be filed in writing with the CPO/DOP and contain the name and address of the protestor, the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

7.2.4 The CPO/DOP will review the protest and issue a decision in writing. In the event the protestor requests a hearing on the merits of the protest, the CPO/DOP shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the CPO/DOP shall issue a written decision.

**7.3 Reconsideration**

7.3.1 Reconsideration of a decision on a protest by the CPO/DOP may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made

in writing within five calendar days after receiving the CPO/DOP's written decision. It shall contain the name and address of the aggrieved party, the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for reconsideration with supporting documentation, a copy of the CPO/DOP's written decision, the relief sought, and if a hearing on the merits is requested.

7.3.2 The Chief Financial Officer shall review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

7.3.3 The institution may refuse to decide any protest or reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects or otherwise expresses interest in the decision of the institution.

**7.4 Filing Protests, Requests for Reconsideration and Decisions with the Vice Chancellor for Administration**

7.4.1 Within 15 calendar days after receiving a protest or request for reconsideration, the CPO/DOP or the Chief Financial Officer shall forward a copy of the protest or request for reconsideration to the Vice Chancellor for Administration, along with all supporting documentation provided by the protestor.

7.4.2 A decision on a protest by the CPO/DOP and on reconsideration by the Chief Financial Officer shall be forwarded to the Vice Chancellor for Administration at the time such decision is mailed, transmitted or delivered to the protestor.



**SECTION 8**  
**SUSPENSION AND RECONSIDERATION**

**8.1 Suspension**

- 8.1.1 The CPO/DOP shall have the power and authority to suspend, for a period not exceeding one year, the right and privilege of a vendor to bid on purchases of the institution.
- 8.1.2 The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials or services late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-7 [[click here for access to Chapter 18B](#)] or [Series 30](#) and [Series 43](#) of the Council's and Commission's rules, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-7 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the CPO/DOP's discovery of such act, omission, or conviction.
- 8.1.3 When the CPO/DOP determines that sufficient reason or cause exists to warrant suspension of a vendor, the CPO/DOP shall:
- a. Notify the vendor by letter posted by certified mail, or such other means to verify receipt, of such reason or cause; and
  - b. Give the vendor sufficient time, but no less than ten calendar days after receipt of the CPO/DOP's letter, to respond in writing, or the vendor may make a written request for a hearing before the CPO/DOP.
- 8.1.4 If the vendor responds in writing but does not request a hearing, the CPO/DOP shall consider the vendor's response and what bearing, if any, it may have on his or her decision to suspend the vendor. The CPO/DOP may request additional information from the vendor prior to making a decision. If the CPO/DOP decides that the suspension should be made, notice of such suspension and the reason(s) therefore shall be sent to the vendor by letter posted by registered mail.
- 8.1.5 If the vendor responds in writing and requests a hearing, the CPO/DOP shall schedule one within a reasonable amount of time and notify the vendor by letter, posted by registered mail, of the date, time, and place.
- 8.1.6 If the vendor or his or her representative does not appear at the hearing, the CPO/DOP may suspend the vendor without further recourse and shall notify the vendor of such suspension and the reason(s) therefore by letter posted by certified mail or such other means to verify receipt.
- 8.1.7 The CPO/DOP shall act as hearing examiner at any hearing held. An opportunity shall be afforded to all parties to present evidence and arguments with respect to the matters and issues involved. The affected vendor shall have the right to be represented by a representative of his or her choice. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. The vendor and CPO/DOP or their respective representatives shall

have the right to examine and cross-examine witnesses who testify, and shall have the right to submit rebuttal evidence.

8.1.8 All of the testimony, evidence and exhibits presented and any rulings on their admissibility shall be recorded and an official record shall be prepared.

8.1.9 Decisions rendered by the CPO/DOP shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and accompanying findings and conclusions shall be provided to each party and his or her representative of record, if any, in person, by certified mail or such other means so as to confirm receipt.

## **8.2 Reconsideration**

8.2.1 Reconsideration of a decision on suspension by the CPO/DOP may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the CPO/DOP's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

8.2.2 The Chief Financial Officer will review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the conference. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

8.2.3 The institution may refuse to decide any reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the institution.

## **8.3 Notification to the Vice Chancellor for Administration**

8.3.1 An institution that suspends the right and privilege of a vendor to bid on purchases of the institution shall forward a copy of the suspension notice to the CPO/DOP of the Council or Commission Office, who shall maintain a record of such suspensions and shall notify all institutions under the jurisdiction of the governing boards as well as the Director of the State Division of Purchasing of such suspension.

8.3.2 If the CPO/DOP of the Council or Commission Office determines that the actions of the vendor leading to the suspension by an institution are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justifies a system-wide suspension, he or she shall notify the vendor and the institutions within the same system as the institution that suspended the vendor that the vendor's suspension shall apply to all institutions within that system for the period of the original suspension.

## SECTION 9 RECEIVING AND INVENTORY MANAGEMENT

### 9.1 Receiving

9.1.1 The CPO/DOP shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction over the institution. They shall be approved by the president and filed with the Vice Chancellor for Administration.

9.1.2 Receiving and inspection of materials, supplies, equipment, services and printing is very important, but often an overlooked aspect of procurement. Without adequate receiving procedures, the effort expended in writing specifications, bidding, and buying is meaningless. Only with effective receiving and inspection can the institution be assured of obtaining the products and services ordered. In order to achieve the traditional "three-way match" (a match between the purchase order, the receiving ticket and the invoice), the receiving procedures developed by the CPO/DOP will be an integral part of the purchasing process.

9.1.3 The purpose of inspection in the receiving process is to examine commodities and delivery records to make certain that vendors furnish the commodities ordered and to insure that the requirements as set forth in the purchase order are actually met; to protect the institution from receiving merchandise, supplies, equipment, services, and printing that are below the specified quality level; and to prevent unfairness to the other bidders. Institutions should develop internal and departmental procedures to assist the CPO/DOP in the inspection process.

### 9.2 Receiving Report Required for Commodities Received

9.2.1 [West Virginia Code §12-3-10f](#) requires that a receiving report be submitted to the State Auditor verifying the receipt of commodities by a state spending unit. The receiving report shall be an internally generated document, either written or prepared using electronic media that identifies commodities received. Commodities as defined in this section include, but are not limited to, the following: materials, equipment, supplies, printing and automated data processing hardware and software. The State Auditor has developed a form and format for the receiving report (See Appendix H). Also, consult the State Auditor's legislative rule, [Title 155, Series 1, Standards for Requisitions for Payment Issued by State Officers on the Auditor](#) for instructions on how to record receipt for purchases.

9.2.2 The state officer or employee acting as head of each spending unit is responsible for the completion and timely submission of the receiving reports, which shall be prepared at the original point of receipt of the commodities at the spending unit by employees designated by the head of the spending unit to receive the commodities and prepare the receiving reports. The receiving reports shall include, but not be limited to, the following information: vendor name, description and quantity of commodities received, date commodities are received, whether commodities are acceptable for payment, and a signed acknowledgment of receipt by the employees receiving the commodities. The receiving reports required by this section shall be prepared within twenty-four hours of the receipt of the commodities.

9.2.3 The head of a spending unit may not issue a requisition on the State Auditor in payment of a claim for commodities received by the spending unit unless the receiving report accompanies the claim for payment. The spending unit is liable for a debt improperly incurred or for a payment improperly made if the receiving report was not filed with the state auditor as set

forth in this section.

### **9.3 Inventory**

- 9.3.1 The purpose of inventory and inventory management is to track and account for the monies spent for equipment and furnishings so as to protect the assets of the institution.
- 9.3.2 The CPO/DOP shall develop inventory procedures and an inventory management system for the institution that conforms to generally accepted accounting standards and practices, state law, the rules, policies and procedures of the Council, Commission and the governing board have jurisdiction over the institution, and to meet the requirements of the institution's annual financial audit. The president shall approve the institution's inventory procedures and inventory system, and a copy of the procedures and a description of the inventory management system shall be filed with the Vice Chancellor for Administration.
- 9.3.3 At a minimum, the inventory procedures and inventory management system developed by the CPO/DOP shall:
- a. Account for all equipment and furnishings with a value at the time of purchase of \$5,000 or more per unit. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit;
  - b. Establish a procedure to number and tag all equipment and furnishings required to be inventoried;
  - c. Identify the date of acquisition, model number and serial number, if applicable;
  - d. Provide a short physical description;
  - e. Identify the cost of acquisition, including shipping and installation costs;
  - f. Record the location of equipment or furnishings; i.e., the department, or the building and room number;
  - g. Provide the purchase order number and account number(s) used to pay for the purchase; and
  - h. When retired, indicate the retirement date, method of retirement and disposal price, if applicable.
- 9.3.4 The CPO/DOP shall perform or provide for an institution-wide audit and inventory of the institution's assets on a schedule consistent with generally accepted accounting standards and as prescribed by law or regulation, when applicable.
- 9.3.5 The institution's inventory report shall be kept on file in the institution's Purchasing Office and made available to appropriate parties upon request.

**SECTION 10**  
**DISPOSITION OF SURPLUS EQUIPMENT, SUPPLIES AND MATERIALS**

**10.1 General Information**

- 10.1.1 The Council, Commission, the governing boards and their institutions have the authority to dispose of obsolete, surplus and unusable materials, supplies and equipment, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.
- 10.1.2 The CPO/DOP or designee shall identify and inventory the institution's obsolete, surplus and unusable materials, supplies and equipment and shall store these materials, supplies and equipment until such time as they may be disposed of in a manner consistent with state law and the rules, regulations and procedures of the Council, Commission and the governing board having jurisdiction over the institution.
- 10.1.3 Under no circumstances shall any obsolete, surplus and unusable materials, supplies and equipment be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in [West Virginia Code §18B-5-7](#).
- 10.1.4 The funds an institution receives from the sale of obsolete, surplus and unusable materials, supplies and equipment shall be deposited in the institutional account originally used to purchase said materials, supplies and equipment if such account is readily ascertainable, minus any administrative costs associated with the disposal. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

**10.2 Methods of Disposal of Obsolete, Surplus and Unusable Materials, Supplies and Equipment**

- 10.2.1 Institutions may dispose of obsolete, surplus and unusable materials, supplies and equipment in one or more of the following manners:
- a. Trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the CPO/DOP or designee;
  - b. Sale to the general public by sealed bid or at public auction;
  - c. Transfer to municipal, county, state and federal agencies and institutions;
  - d. Donation to charity/nonprofit organizations
  - e. Joining with Marshall University or West Virginia University at their surplus auction or sale; and
  - f. Utilizing the Surplus Property Division of the Department of Administration.
- 10.2.2 The chosen method should be one that has the best prospect of yielding the greatest return to the institution after the cost of the sale has been deducted from the revenue derived. Transfers to other governmental agencies and institutions should cover those aspects that will enhance

the institution's public awareness in the local community and in the interest of providing a needed service to the community.

### 10.2.3 Trade In

10.2.3.1 The institution may take advantage of a trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the CPO/DOP or designee.

### 10.2.4 Sealed Bids or Public Auction

10.2.4.1 Sales by sealed bid or at public auction may be conducted by any institution. Institutions shall, in accordance with state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, develop their own procedures for conducting sales by sealed bid or at public auction; provided that (a) at least ten days prior to the disposition an advertisement of such sale shall be published as a Class II legal advertisement, as provided in [West Virginia Code §59-3](#) (which means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication), in the county in which the equipment, supplies and materials are located; (b) the procedures are documented and available to all who are interested in participating prior to the date for receipt of bids or the date of the auction; and (c) that the institution has the right to reject all bids and that all sales are final.

10.2.4.2 Original documentation of the sealed bid process or auction shall be kept by the institution for a period of one year. After that date, the documentation may be reproduced and archived on microfilm or other equivalent method of duplication for review or auditing purposes.

### 10.2.5 Transfer to Municipal, County, State and Federal Agencies and Institutions

10.2.5.1 Transfers of obsolete, surplus and unusable materials, supplies and equipment may be made to municipal, county, state and federal agencies and institutions. The CPO/DOP shall keep a record of such transfers containing the following information on each item:

- a. Inventory tag number, if applicable;
- b. Description;
- c. Model number, if applicable;
- d. Serial number, if applicable;
- e. Present value of the materials, supplies and equipment; and
- f. The name and address of the agency or institution receiving the materials, supplies and equipment.

10.2.5.2 These records shall be kept as a public record open to public inspection for a period of two years. These items shall be removed from the institution's inventory.

### 10.2.6 Donation to Charity/Nonprofit Organizations

- 10.2.6.1 Donations of obsolete, surplus and unusable materials, supplies and equipment may be made to Charity/Nonprofit Organizations. The organization must submit evidence of their nonprofit status prior to any donations. The CPO/DOP shall keep a record of such donations containing the following information on each item:
- a. Inventory tag number, if applicable;
  - b. Description;
  - c. Model number, if applicable;
  - d. Serial number, if applicable;
  - e. Present value of the materials, supplies and equipment; and
  - f. The name, address and proof of non-profit status of the organization receiving the materials, supplies and equipment.
- 10.2.6.2 These records shall be kept as a public record open to public inspection for a period of two years. These items shall be removed from the institution's inventory.
- 10.2.7 Joining with Marshall University or West Virginia University at their Surplus Auction or Sale
- 10.2.7.1 When an institution determines that it is in its best interest, it may join with either Marshall University in Huntington or West Virginia University in Morgantown to dispose of obsolete, surplus and unusable materials, supplies and equipment. Any institution desiring to participate in Marshall University's or West Virginia University's sale or auction shall:
- a. Provide at least 90 days advance notification prior to the date of the upcoming public auction or sale to the university involved;
  - b. Deliver and unload the obsolete, surplus and unusable materials, supplies and equipment to the university involved;
  - c. Make arrangements with the university involved to obtain the services of a qualified auctioneer, if the sale is by public auction, and provide a physical description of the items being offered for sale for advertising purposes;
  - d. Reimburse the university involved for all expenses related to selling the institution's obsolete, surplus and unusable materials, supplies and equipment at the university's auction or sale;
  - e. Affix the institution's identification on all items to be sold so as to assure fair allocation of the auction sale proceeds;
  - f. Send a representative to the public auction or sale to act on the institution's behalf. Institutions shall have the right to refuse any bid; and
  - g. Remove as scrap or otherwise any surplus items not sold during the public auction or sale.
- 10.2.8 Utilizing the Surplus Property Division of the Department of Administration

10.2.8.1 Institutions may also dispose of obsolete, surplus and unusable materials, supplies and equipment through the Surplus Property Division of the Department of Administration; in such case, all of the rules and regulations of the Department of Administration shall be followed.

### **10.3 Reporting Requirements**

10.3.1 All inventories of surplus equipment, supplies and materials sold shall be kept as a public record open to public inspection for a period of two (2) years.

10.3.2 As provided in [West Virginia Code §18B-5-7\(b\)](#), The Council, Commission or governing board, as appropriate, shall report semiannually to the Legislative Auditor all sales of commodities made during the preceding six months. The report shall provide an itemized listing of each commodity sold and include the inventory tag number, a description of the commodity, the name of the buyer and the price paid by the buyer. The dates for these reports are February 1 for the period of July 1 through December 31 and August 1 for the period of January 1 through June 30. The form and format of this report shall be as required by the Vice Chancellor for Administration and/or the Legislative Auditor (see Appendix C).

### **10.4 Surplus Removal Contracts**

10.4.1 Any contracts for removal of obsolete, surplus and unusable materials, supplies and equipment shall be issued by the CPO/DOP in accordance with state law and the policies, procedures and guidelines of the Council, Commission and the governing board having jurisdiction over the institution.

### **10.5 Redeposit of Funds**

10.5.1 All monies derived from the sale of obsolete, surplus and unusable materials, supplies and equipment must be redeposited as follows, provided the account originally used for the purchase is readily ascertainable, minus any administrative costs associated with such sale. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

- a. Purchases made from general revenue funds must be deposited according to wvOASIS requirements for refunds into the general revenue fund; and
- b. Purchases made from special revenue funds must be redeposited into the same fund from which the expenditure originally occurred.



**SECTION 11**  
**ESSENTIAL SERVICES**

**11.1 Essential Services**

11.1.1 A special class of goods and services known as essential services. The list below contains items considered to be essential services.

- a. License fees of all types;
- b. Utilities of all types, including cable TV and connections and disconnections;
- c. Federal, state, county, and municipal fees and assessments;
- d. Postage;
- e. Association dues;
- f. Accreditation fees;
- g. Employee travel, subsistence, and other reimbursement;
- h. Shipping, handling, and freight charges;
- i. Subscriptions, periodicals, and publications;
- j. Motor vehicle and aircraft fuel;
- k. Cash advances;
- l. Refunds;
- m. Credit card fees and charges and bank fees;
- n. Inter-library loan charges;
- o. Inter/intra-institutional charges and fund transfers;
- p. Registration and tuition fees;
- q. Insurance premiums;
- r. Medical and doctor's fees, prescriptions, drugs, medical sundries, fees for human subjects, medical studies, tests, x-rays, CAT scans, MRIs, and emergency medical procedures and tests of all types; and
- s. Contracts for artists, entertainers and speakers with terms and conditions which do not conflict with the WV-96 form, and adjudicators and others who are charging travel expenses only for their services.
- t. Services utilized on a one-time basis.

The above essential services are to be paid with all available back-up documentation to allow for adequate review and approval but do not require a purchase order. Adequate back-up documentation includes any detail available regarding how the dollar amount of the payment was determined. One-time services will be acceptable for payment only with an order acknowledgement that either pre-dates or is the same as the date of service and is signed as accepted by the institution.

### 11.1.2

In addition, there are services that are considered to be essential that require either an open-end contract, agreement or a purchase order in order to be paid. These services include:

- a. Books and related items, including those for libraries and bookstores. Back-up includes any open-end agreements with book suppliers or quotes received prior to purchase.
- b. Hospitality expenses. Back-up includes any agreements made with vendors for a booked conference and/or meeting as well as an approved hospitality form, a list of attendees and receipts from food vendors.
- c. Athletic and academic team travel and related expenses. Back-up includes any agreements with a hotel/motel for a guaranteed room rate or other similar agreements made in association with the travel. If no agreements are made then documentation stating such must be included.
- d. Advertising. In the case of newspaper, magazine and/or internet (etc.) advertisement placements, back-up includes evidence of the advertisement and the rate quote (if obtained). If an advertising company is hired to perform services then the back-up must include a copy of the contract.
- e. Software and software license/maintenance agreements. Back-up includes contracts entered into for monthly and/or annual services or maintenance. If the software is a one-time purchase then evidence of the price quotation is required.
- f. Resale merchandise, sundries, food and related items used by auxiliary services. Back-up for repetitive purchases includes any contracts or agreements with the vendor providing these products. If the purchase is a one-time purchase, evidence of the price quotation is required and certification of the transaction as a one-time purchase is required.
- g. Maintenance contracts. Back-up includes the agreement with the vendor detailing the length of the contract, services included and the agreed upon pricing.
- h. Student awards, scholarships, stipends, loans and grants. Back-up includes the signed document/agreement for each of the aforementioned documents. In the case of a stipend, if no formal agreement exists then documentation of the invitation to participate at a guaranteed rate needs to be included.
- i. Contracts for artists, entertainers and speakers. For contracts that require a WV96, back-up includes the signed contract including the guaranteed terms, the price for the services, any related expenses including travel and the signed WV96.

## SECTION 12 PERFORMANCE AUDITS

### 12.1 Legislative Performance Audit

12.1.1 [West Virginia Code §18B-5-4\(n\)](#) requires the Joint Committee on Government and Finance to conduct an independent performance audit of all purchasing functions and duties performed at any institution of higher education once in each three year period. The Council, Commission and the governing boards shall be responsible for paying the cost of the audits from funds appropriated to them.

12.1.2 Each institution shall have available all records and supporting documentation for items that were purchased during a given fiscal year. Information in the purchasing file for each vendor shall include, but not necessarily be limited to the following:

- a. Vendor's name and complete address;
- b. Telephone number, if the quotation was obtained via telephone;
- c. Complete item description;
- d. Bid for each item and the extended price;
- e. Name of person contacted and providing the bid; and
- f. Name of person at the institution receiving the bid/price via telephone.

12.1.3 The Purchasing Department at each institution may be called upon to provide the following information for the audit:

- a. Total dollars spent on equipment, services, repairs and alterations, and other items;
- b. Total number of vendors contracted with and identified as being either in-state, out-of-state, or out-of-state with an in-state branch;
- c. Total dollar amount of items purchased in-state, out-of-state, or out-of-state with an in-state branch;
- d. Number of items put out for competitive bid; and
- e. Vendor name, address, price quote and reason for award or rejection of bid(s) on each RFQ, RFB, RFP or REOI.

12.1.4 All purchasing documents shall be available for inspection by the performance auditor. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the consent of the Legislative Auditor.

### 12.2 Purchasing Audits Performed by the Council or Commission

12.2.1 The Vice Chancellor for Administration may provide for a periodic audit of institutions for compliance with the rules, policies and procedures of the Council and Commission, upon request of the Council/Commission.

12.2.2 As provided in West Virginia Code §18B-5-4(r)(1), the Council/Commission also has an obligation to conduct a performance audit of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education at least once in each three-year period. The Council/Commission must also make a report to the Legislative Oversight Commission on Educational Accountability (LOCEA) on the results of the performance audits, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the institutions and the Council and Commission.

### **12.3 Internal Purchasing Audits Performed by the CPO/DOP**

12.3.1 The CPO/DOP may, at his or her discretion, or in the absence of a Legislative Performance Audit for any fiscal year, provide for an independent audit of the institution's purchasing function, and for any delegations of purchasing authority. The CPO/DOP may also carry out the audit at the request of the Vice Chancellor for Administration, the institution's president, or its Chief Financial Officer. It is recommended that each institution conduct an internal audit of its purchasing function at least once every two years to ensure compliance with state law and the rules, policies and procedures of the governing board having jurisdiction over the institution.

12.3.2 Any internal audit conducted by the institution should be documented in an internal report, detailing any irregularities and any recommendations for improving the institution's purchasing procedures. This report is to be made available to the performance auditor. The CPO/DOP shall be responsible for the method of conducting the internal audit.

## SECTION 13 GLOSSARY OF TERMS

### 13.1 Definitions

The words defined in the Higher Education Purchasing Procedures manual shall have the meanings set forth below whenever they appear unless:

- a. the context in which they are used clearly requires a different meaning; or
- b. a different definition is prescribed for a particular section or provision.

Addendum: An official written modification to specifications or other documents in a RFQ or request for proposal issued by the purchasing office of an institution prior to receiving quotations or proposals.

Assets: Property of all kinds that has an appreciable and calculable period of usefulness of more than one year and is intended to be held and used, such as land, buildings, machinery, furniture, roads, bridges and other equipment.

Authorized Signature: The signature of an individual empowered by a superior authority to enter into a contractual agreement that binds an institution and a vendor to the stated terms, conditions and obligations of performance.

Bid: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a request for bids.

Bidder: One who makes a bid.

Buyer: An individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.

Bid Bond: A type of indemnity bond that must be submitted at the time of the bid and which protects the institution in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award.

Bid Sample: A sample furnished by a bidder to show the characteristics of the item offered in a bid.

Board: See governing board.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Chancellor for Community and Technical College Education: The chief executive officer of the Council employed pursuant to West Virginia Code §18B-2B-3.

Chancellor for Higher Education: The chief executive officer of the Commission employed pursuant to West Virginia Code §18B-1B-5.

Change Order: Any written alteration in a specification, delivery point, rate of delivery, period of performance, price, quantity, quality, terms and conditions or other provisions of any contract or purchase order accomplished by mutual consent of parties to the contract or purchase order.

Chief Procurement Officer (CPO/DOP): The individual designated by a president of a state institution of higher education to manage, oversee, and direct the purchasing, acquisition, receiving, and inventory management of materials, supplies, equipment, services and printing, and disposal of obsolete, surplus and unusable materials, supplies and equipment of that institution. For the Council or Commission Office and West Virginia Network for Educational Telecomputing, the CPO/DOP, in each case, is the person designated by the Vice Chancellor for Administration.

Commission: See West Virginia Higher Education Policy Commission.

Commission Office: The office that houses the Vice Chancellor for Administration and such professional, administrative, clerical and other employees as may be necessary to assist the Vice Chancellor for Administration perform his or her functions, tasks and duties..

Commodity: Those things that are useful or serviceable, particularly articles or merchandise movable in trade. Materials, supplies, equipment, services, printing, repairs and alterations, and construction, and any article or thing used by or furnished to an institution.

Complainant: One who lodges a complaint.

Complaint: An informal expression of dissatisfaction by a complainant to the CPO/DOP or designee, or to a senior officer of an institution, about the procurement activities of an institution.

Contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing. An agreement to procure, provide or dispose of goods and services in accordance with mutually acceptable terms and conditions for a specified price.

Contract Modification: See Change Order.

Contractor: One who has a contract with the Commission, Council, a governing board or one of its institutions.

Council: See West Virginia Council for Community and Technical College Education.

Data: Recorded information, regardless of form or characteristic.

Descriptive Literature: Information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and which enables the institution to consider whether the item meets its needs.

Designee: A duly-authorized representative of a person holding a superior position.

Employee: An individual drawing a salary from an institution.

Equal: Implies identity but duality, and the use of one thing as a measure of another.

Equipment: Physical assets of a permanent or long-term nature used in the operation of an institution and not intended for sale. Assets that have a life of at least one (1) year and an initial cost in excess of \$1,000.

Equivalent: Alike; uniform, but not necessarily identical; on the same plane or level with respect to efficiency, worth, value, amount, force, measure, volume, effect, power, or rights.

Expression of Interest: A formal, written statement or document submitted in response to a request for expressions of interest declaring one's desire to provide commodities, usually professional services, to the

institution. Frequently an expression of interest does not contain a price proposal; but instead, it is a submission of credentials, experience, and/or a response to written criteria that will be used to judge responses for selection of a successful respondent.

Governing board(s): The institutional boards of governors created pursuant to West Virginia Code §18B-2A-1.

Higher Education Institution: An institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended. See Institution.

Interested Party: An actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

Institution(s): Any public West Virginia university, college, and community and technical college, individually or collectively, created pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Council, Commission Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

Invitation to Bid: Notice or advertisement of an intent by an institution to purchase or dispose of materials, supplies, equipment, services, printing or any other thing of value. Also, see RFQ, request for bids, request for proposals, and request for expressions of interest.

Labor and Material Payment Bond: A type of indemnity bond given by an obligor, usually on a public construction project, that guarantees payment of labor and material costs, or guarantees reimbursement to an obligee for any loss suffered due to the conduct of the obligor or a third party.

Maintenance Bond: A type of indemnity bond given by an obligor to an obligee, usually on a public construction project, that guarantees the upkeep or preservation of condition of property, including ordinary repairs necessary and proper from time to time for that purpose.

May: Denotes the permissive.

Open End: A contract for a specified period of time, at an agreed upon price, for an unspecified quantity of product or service.

Performance Bond: Surety bond that guarantees that contractor will fully perform contract and guarantees against breach of contract. Proceeds of bond are to be used to complete contract or compensate for loss in the event of nonperformance.

Person: Any individual, business, corporation, union, committee, club, or other organization, or group of individuals.

President: The chief executive officer of a higher education institution.

Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring materials, supplies, equipment, services, printing, repairs and alterations, or construction. It also includes all functions that pertain to the obtaining of said commodities, including description of requirements, selection, and solicitation of sources, and administration.

Procurement Officer/Agent: See Buyer. The term also includes an authorized representative acting within the limits of authority.

Proposal: An offer; something proffered. An offer, by one person to another, based on stated terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them.

Protest: A formal and written declaration made by an actual or prospective bidder interested in or concerned about a procurement whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such dissent is to save some right that would be lost to him.

Protestor: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Purchasing Department/Office: The administrative unit of an institution that is responsible for managing the institution's purchase and acquisition of materials, supplies, equipment, services and printing, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

Quotation: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a RFQ, usually for commodities which cost \$50,000 or less.

Request for Bids: A document issued for the purpose of soliciting a bid, usually for commodities that cost in excess of \$50,000.

Request for Expressions of Interest: A document issued for the purpose of soliciting an expression of interest.

Request for Proposals (RFP): A document issued for the purpose of soliciting a proposal.

Request for Quotations (RFQ): A document used for the purpose of soliciting a quotation or bid.

Requisition: A document prepared by a person or department within an institution that is used to officially request goods or services. It usually contains a specification for the article or service requested.

Resident Vendor or Bidder: A vendor or bidder who meets the requirements of the West Virginia Code for being considered an in-state individual or business.

Responsible Bidder or Vendor: A person who has the capability in all respects to perform contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder or Vendor: A person who has submitted a bid that conforms in all material respects to the requirements and minimum specifications of the invitation to bid.

Services: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall: Denotes the imperative.

Signature: The name of a person written with his or her own hand; the act of signing one's name. The act of putting one's name at the end of an instrument to attest to its validity.

Specification: A clear and accurate description of the physical, functional, or performance characteristics or nature of the material, supplies, services, equipment, or printing to be purchased. A specification may also include requirements for inspection, testing and preparing the commodity for delivery. The purpose of a



specification is to serve as a basis for obtaining a commodity adequate and suitable in a cost-effective manner, taking into account the cost of ownership and operation as well as initial acquisition cost.

Supplies: Materials or items that will be consumed during the normal course of business within one (1) year, or have a useful life of one (1) year or less, and have an initial cost of \$1,000 or less.

State Code: Denotes the West Virginia State Code; the law of the State of West Virginia.

Unauthorized Signature: One made without actual, implied or apparent authority and includes a forgery.

Vendor: A supplier who provides, in exchange for consideration, materials, supplies, equipment, services, printing, repairs, alterations, and construction.

Vendor Preference: The preference given on competitive bids to a West Virginia resident vendor over a low bid from a nonresident vendor in accordance with the Code of West Virginia.

West Virginia Council for Community and Technical College Education (or Council): The council created pursuant to West Virginia Code §18B-2B-1.

West Virginia Higher Education Policy Commission (or Commission): The commission created pursuant to West Virginia Code §18B-1B-1.

Will: Denotes the imperative.

## Appendix A

### **AIA B101-2017 Supplementary Conditions Standard form of Agreement Between Owner and Architect.**

**This current version of this form can be found at:**

<http://www.state.wv.us/admin/purchase/aia/default.html>

### **AIA A201-2017 Supplementary Conditions to Standard Form of Agreement Between Owner and Contractor**

**The current version of this form can be found at:**

<http://www.state.wv.us/admin/purchase/aia/default.html>

**Higher Education Real Property Lease-Purchase Agreement*****Section 1.01 HIGHER EDUCATION REAL PROPERTY  
LEASE-PURCHASE AGREEMENT***

THIS REAL PROPERTY LEASE-PURCHASE AGREEMENT ("Lease"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *[INSERT LESSOR'S LEGAL NAME]* ("Lessor"), and *[INSERT INSTITUTION'S LEGAL NAME]* ("Lessee");

WHEREAS, pursuant to provisions of West Virginia Code §18B-19-11, the Board of Governors of *[Name of Institution]* enters into this Lease with the approval of *[the West Virginia Higher Education Policy Commission OR the West Virginia Council for Community and Technical College Education, as appropriate]*; and

WHEREAS, Lessee seeks to enter into an agreement with Lessor to lease-purchase the Leased Premises, as defined below, for the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), pursuant to the terms and conditions hereinafter stated;

***Section 1.02 NOW, THEREFORE, THIS LEASE-PURCHASE AGREEMENT WITNESSETH:***

1. Lease. For and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, Lessee agrees to lease and Lessor hereby leases unto the Lessee, the capital improvements, appurtenances and fixtures thereto consisting of \_\_\_ parcel(s) of property located at \_\_\_\_\_ *[INSERT PROPERTY LOCATION OR ADDRESS]*, as specified in Exhibit A attached hereto and made a part hereof (the "Leased Premises"). Upon execution, this Lease is binding on and enforceable against Lessor and Lessee in accordance with its terms.
  
2. Representation, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants as follows:
  - (a) Lessee is authorized by the laws and Constitution of the State of West Virginia to enter into this Lease and to perform its obligations hereunder. The Lessee has been authorized to enter into and has approved the execution and delivery of the Lease, as a legal, valid and binding obligation of the Lessee in accordance with the respective terms hereof.
  
  - (b) The execution and delivery of this Lease, the fulfillment of or compliance with the terms and considerations hereof, and the consummation of the transaction contemplated hereby, will not conflict with, constitute a breach of, or default under, the Constitution and laws of the State, or the rules of procedure of the Lessee or agreement or other instrument to which the Lessee is a party or by which it is bound, or any constitutional or statutory provision, or order, rule, regulation, decree or ordinance of any court, government or governmental body to which the Lessee, the Leased Premises or any of the Lessee's other properties are subject.
  
  - (c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Lessee's knowledge, threatened, against the Lessee, wherein an unfavorable ruling or finding would adversely affect the validity or enforceability of this Lease, or which would materially and adversely affect the transaction contemplated thereby or Lessee's ability to perform its obligations hereunder.
  
  - (d) The Leased Premises at all times will be used by the Lessee for the purpose of performing educational and other activities. The Leased Premises will be used by the Lessee for the purposes of performing an essential governmental function, and the leasing and acquisition of the Leased Premises is necessary to the operation of the Lessee and is consistent with the permissible scope of the Lessee's authority.

- (e) All consents and approvals of, the giving of notice to, registration with, and the taking of any action in respect of any federal, state, or local governmental authority, necessary to the execution of the Lease or to permit the transaction contemplated by this Lease to occur have been received, have occurred, have taken, or have been performed prior to delivery of the Lease.
  - (f) Lessee hereby declares its current need for the Leased Premises and its present intention and expectation that this Lease will not be terminated until all Lease Payments hereunder have been paid pursuant to the Lease, but this representation shall be subject to the Lessee's rights to terminate this Lease pursuant to the provisions of the Lease.
  - (g) The officer of the lessee executing this Lease has been duly authorized to execute and deliver this Lease.
3. Representation, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:
- (a) Lessor is the owner of the Leased Premises and has full authority to enter into this Lease.
  - (b) Lessor will not assign its right, title and interest in and to the Lease Payments under, or assign, pledge or grant any security interest in its right, title and interest in, to and under this Lease or the Leased Premises without the written consent of the Lessee and approval of the Attorney General. Lessor will not assign its duties and obligations under this Lease to any other person, firm or corporation, so as to impair or violate the representations, covenants and warranties contained herein.
  - (c) Neither the execution and delivery of the Lease or any reasonable requested documentation, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, will conflict with, constitute a breach of or a default under, any agreement or other instrument to which the Lessor is a party or by which the  
Lessor or any of its properties may be bound, or any constitutional or statutory provision or order, rule, regulation, decree or ordinance or any court, government or governmental body to which the Lessor or any of its properties are subject.
  - (d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best knowledge of the Lessor, threatened against the Lessor, wherein an unfavorable ruling or finding would adversely affect the validity or enforceability of the Lease, or any document to which Lessor is a party or which would materially and adversely affect the ability of Lessor to perform Lessor's obligations under this Lease or any other document to which Lessor is a party.
  - (e) During the term of this Lease and as long as an Event of Default, as defined in Section 14, is not occurring, Lessee shall have control of the Leased Premises.
4. Term and Notices. The Lease Term, subject to the provisions hereof, shall commence on the date of delivery of the Leased Premises to Lessee, and shall terminate upon the first to occur:
- (a) Payment of the final Lease Payment;
  - (b) Payment of the Purchase Option Price as provided in Section 8;
  - (c) An Event of Non-appropriation as defined in Section 10;
  - (d) An Event of Default as defined in Section 12; or
  - (e) Cancellation at the option of the Lessee pursuant to Section 14.

Pursuant to West Virginia Code §18B-19-12(e)(3), this Lease shall be considered renewed for each ensuing fiscal year and all portions thereof during the term of this Lease unless it is canceled by the Lessee before the end of the then current fiscal year. If not sooner terminated, this Lease shall terminate as of the date of payment in full of the Lease Payments hereunder or payment of the Purchase Option Price.

Notices shall be made in writing and mailed to the other party at its address as set forth below, or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days after mailing. Notices shall be directed as follows:

<u>To the</u> _____ _____ _____	<u>To the Lessor:</u> _____ _____ _____
--	--

***[INSERT NAME AND MAILING ADDRESS FOR NOTICES]***

5. Lease Payments. Lessee agrees to pay to Lessor as Lease Payments for the Leased Premises, on or before the first day of each month during the term of the Lease for the preceding month, in the amounts set forth on the Lease Payment Schedule attached hereto as Exhibit B and made a part hereof.
  
6. Payments Constitute Limited Obligation. This Lease constitutes a special obligation of the State of West Virginia. The obligation may be met by any funds legally available to the Lessee. The obligation of Lessee to pay Lease Payments hereunder is a current expense of Lessee, subject to and dependent upon appropriations being made available by the West Virginia State Legislature for such purposes. No provision of the Lease shall be construed or interpreted as creating a general obligation or other indebtedness of the Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the Lessee or the State of West Virginia beyond any fiscal year for which such revenues, funds or monies are appropriated.

This Lease, or any assignment or securitization hereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision of the State, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the State or any political subdivision thereof.

Neither this Lease nor any assignment hereof shall directly or indirectly obligate the Lessee or the State of West Virginia to make any Lease Payments beyond those actually appropriated for the then current fiscal year. The Lessee shall not be under any obligation whatsoever to exercise its option to purchase the Leased Premises.

7. Obligation Unconditional. Subject to the provisions hereof, the obligation of the Lessee to pay the Lease Payments during a fiscal year for which an appropriation has been made or funds are otherwise available as provided hereunder shall be absolute and unconditional, and payment of the Lease Payments shall not be abated through accident or unforeseen circumstances, any damage to or destruction of the Leased Premises or any part thereof, any taking of the Leased Premises or any part thereof by condemnation or otherwise, or any other prohibition, limitation, restriction, or prevention of the Lessee's use, occupancy, or enjoyment of the Leased Premises, except as provided in Section 15 herein.
  
8. Option to Purchase. At any time during the Lease Term, Lessee shall have the option to purchase the Leased Premises by paying the Lessor the Purchase Option Price as shown in the attached Lease Payment Schedule (Exhibit B).

As used herein, "Purchase Option Price" means the amount equal to the outstanding principal, as set forth in the Lease Payment Schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the Purchase Option Price, provided that any other sum due under this Lease has or is being paid, payable at the option of Lessee for the purpose of purchasing the Leased Premises.

9. Budgeting and Appropriations. Lessee reasonably believes that sufficient funds can be obtained to make all Lease Payments during the Lease Term. The Lessee shall annually request an appropriation or budget allocation of sufficient moneys to fund the Lease Payments for the next fiscal year. Lessee intends to make Lease Payments for the full term of this Lease, and represents that the Leased Premises will be used for one or more governmental or proprietary functions essential to its proper, efficient and economic operation.
10. Event of Non-Appropriation. Notwithstanding anything in this Lease to the contrary, the parties agree that in accordance with West Virginia Code § 18B-19-12(e)(2), this Lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this Lease or cause it to be canceled.

Upon the occurrence of an Event of Non-appropriation, this Lease shall terminate without penalty at the end of the current fiscal year and the Lease and other payments shall be canceled. In any event aforementioned, the Lessee shall immediately redeliver possession of the Leased Premises to the Lessor, and upon such redelivery Lessee shall be relieved from any and all obligations hereunder concerning the Leased Premises, except for rent accruing prior to the date of redelivery. Lessee agrees to provide written notice to Lessor of an Event of Non-appropriation as soon as Lessee determines that such an event exists. An Event of Non-appropriation shall not be considered an Event of Default.

11. Remedies on Non-Appropriation. If any Event of Non-Appropriation shall have occurred, and no appropriation is made in the next fiscal year, the Lessor may notify Lessee that the Lease is terminated, and re-enter on the Leased Premises, unless Lessee exercises its right to purchase the Leased Premises as set out herein. Upon such re-entry by Lessor, Lessee shall redeliver the Leased Premises to Lessor and shall release any right, title and interest they may have in the Leased Premises.

12. Events of Default. The following constitute an “Event of Default” under this Lease:

- (a) Failure by Lessee to pay as the same become due any Lease Payments appropriated by the West Virginia State Legislature during the Lease Term within the time frames described in Section 5 of this Lease; or
- (b) Failure by the Lessee to surrender possession of the Leased Premises upon the termination of this Lease, upon the occurrence of an Event of Non-appropriation pursuant to Section 10, or cancellation of this Lease pursuant to Section 14 hereof; or
- (c) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (a) or clause (b) hereof, provided that (i) the Lessor has notified the Lessee of such failure and (ii) the Lessor has declared such failure to be an Event of Default.

13. Remedies on Default. If an Event of Default occurs, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected with sixty (60) days after receipt of notification, the Lessor may notify Lessee that the Lease is terminated, and re-enter the Leased Premises, unless Lessee exercises its right to purchase the Leased Premises as set forth herein. In such event, Lessee shall redeliver the Leased Premises to Lessor and shall release any right, title and interest they may have in the Leased Premises.

14. Cancellation of Lease. Pursuant to West Virginia Code § 18B-19-11(d), this Lease shall be cancelable at the option of the Lessee at the end of any fiscal year. In such event, the Lessee shall redeliver possession of the Leased Premises to Lessor, and upon such redelivery shall be relieved from any further obligations hereunder.

15. Quiet Enjoyment of Leased Premises. Lessor covenants that as of the delivery of this Lease, it was seized of the Leased Premises as the sole owner thereof, in fee simple, free of all liens, encumbrances and any outstanding

interests whatsoever, and that upon payment of the Lease Payments, it will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; and that the Lessee shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Leased Premises.

16. Title to Leased Premises. During the term of this Lease, title to the Leased Premises and any alterations thereto or replacements thereof shall vest in the Lessee, so long as Lessee is not in default or shall not have terminated the Lease as to the Leased Premises. To secure Lessee's obligations hereunder, Lessee hereby grants to Lessor a security interest in any right, title and interest of Lessee in the Leased Premises.

Upon payment of all Lease Payments, or upon payment of the Purchase Option Price by Lessee, Lessor shall convey all of Lessor's right, title and interest in and to the Leased Premises to Lessee by delivery of a General Warranty Deed in substantially the form set forth as Exhibit C hereto.

17. Taxes and Assessments. The parties acknowledge that the Lessee is exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this Lease, nor will it file any tax returns or reports on behalf of Lessor or its assignees. The Lessee shall be responsible for paying any and all municipal or county fees, such as fire service fees, that may be applicable to the Leased Premises during the Term.

As title to the Leased Premises shall vest in the Lessee during the term of this Lease, the Leased Premises shall be exempt from real property tax pursuant to West Virginia Code § 11-3-9(a)(27).

Pursuant to West Virginia Code § 18B-19-11(f), the interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the West Virginia Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of the Lease Payments made under this Lease be and remain exempt from the gross income of the Lessor for purposes of federal income taxation.

Lessee covenants that it will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the Lease Payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Leased Premises or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the Lease Payments.

18. Suitability of Premises. Lessor warrants the Leased Premises to be suitable for use as a State higher education facility and for the conduct of Lessee's business.
19. Assignment and Subleasing. This Lease may not be assigned by either party without the written consent of the other party, except that Lessee may sublet the Leased Premises in whole or in part to another State agency without the consent of the Lessor, provided that Lessee shall furnish or cause to be furnished to Lessor a copy of any such sublease agreement. Any assignment by Lessor with Lessee's written consent must also be approved as to form by the Attorney General of West Virginia.
20. Use and Maintenance of Leased Premises. Lessee covenants that it shall not commit waste on the Leased Premises. Lessee will, at its expense, maintain, preserve, and keep the Leased Premises in good repair, working order and condition.

Lessee agrees to comply with all federal, state and local laws, ordinances and regulations applicable to the possession, use or maintenance of the Leased Premises. Lessee will not use, operate or maintain the Leased Premises improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses, if any, necessary for the use, occupancy and operation of the Leased Premises.

21. Utilities and Other Related Services. Lessee covenants to promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Leased Premises incurred on and after the delivery of the Leased Premises to Lessee. Prior to such date of delivery, Lessor will remain responsible for all such

utilities.

22. Insurance. Lessee is self-insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against property losses or damage. Lessee is also self insured against liability related to the Leased Premises. In the event of any loss, damage, injury or accident involving the Leased Premises, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

Lessee confirms and agrees that in the event any attempt is made to take the Lease or the Leased Premises by eminent domain that it shall use its best efforts to ensure that the compensation shall in no event be less than an amount sufficient to pay the current Purchase Option Price. If the Leased Premises or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of the Leased Premises or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair or restoration of the Leased Premises or, at Lessee's option, to the payment of the Purchase Option Price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work or pay any cost in excess of the amount of net proceeds, or (b) pay to Lessor the Purchase Option Price. The amount of the net proceeds in excess of the then applicable Purchase Option Price, if any, may be retained by Lessee.

23. No Encumbrance, Mortgage or Pledge of Leased Premises. Neither the Lessor or the Lessee shall permit any mechanic's or other lien to be established or remain against the Leased Premises, nor shall Lessor or Lessee directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Premises.
24. Restriction on Contracts. Lessor agrees that so long as the Lessee is not in default hereunder, it will not enter into any other contract or agreement affecting this Lease or the Leased Premises in any way or attempt to sell, assign, convey or otherwise alienate any interest it may have in the Leased Premises, this Lease or the Lease Payments, or assign the same as security for any other obligations of the Lessor without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, and approval as to form by the Attorney General.

Lessor hereby covenants not to sell or offer to sell or otherwise transfer or encumber this Lease through, nor shall this Lease be sold, transferred or encumbered through,

(1) a certificate of participation program, whereby two or more interests are created in the Lease, the Leased Premises or the Lease Payments; or (2) other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership or other entity, without the express written consent of Lessee and approval of the agreement as to form by the Attorney General of West Virginia.

25. Further Assurance and Corrective Instruments. Lessor and Lessee agree that they will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments as reasonably may be required for correcting any inadequate or incorrect description of the Leased Premises hereby leased or intended to be leased or for otherwise carrying out the intentions hereof.
26. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a legal holiday or a day on which banking institutions are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day that is not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the date otherwise specified herein.
27. Entire Agreement. This Lease constitutes the entire agreement between Lessor and Lessee with respect to the Leased



Premises. There are no understandings, agreements, representations or warranties, express or implied, not stated herein.

The waiver by one party of any breach of any term, covenant or condition hereto shall not operate as a waiver of any subsequent breach thereof. No consent or waiver shall be effective unless set forth in a writing signed by the party to be bound by such consent or waiver.

- 28. Cooperation of Lessor. The Lessor shall cooperate fully with Lessee in filing any proofs of loss with respect to any insurance policy covering the events described in this Lease, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Premises, or in any action relating to any contract or agreement relating to the events described in this Lease. In no event shall the Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any such insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or action, without the written consent of the Lessee.
  
- 29. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
  
- 30. Time of the Essence. Time is of the essence of this Lease, and of each and every covenant, term, condition and provision hereof.
  
- 31. Severability. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.
  
- 32. Compliance with Law. The parties shall comply with all applicable statutes, ordinances, rules and regulations of federal, state and municipal governments, and shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Premises or any portion thereof, and all current and future requirements of all insurance companies writing policies covering the Leased Premises or any portion thereof.
  
- 33. Headings. The headings to the various sections of this Lease have been inserted for reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.
  
- 34. Amendments. All amendments, modifications, alterations or changes to this Lease shall be in writing and signed by Lessor and Lessee.
  
- 35. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this Lease.

| \_\_\_\_\_,  
Lessor  
By \_\_\_\_\_  
Its \_\_\_\_\_  
  
\_\_\_\_\_,  
Lessee  
By \_\_\_\_\_  
  
Its \_\_\_\_\_

|  
Approved as to Form this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, Attorney General

By: \_\_\_\_\_,  
|

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_, for and on behalf of \_\_\_\_\_, Lessor.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(Seal)

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_, for and on behalf of \_\_\_\_\_, Lessee.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(Seal)

**Section 1.03 CERTIFICATE OF ESSENTIAL USE**

THE UNDERSIGNED, \_\_\_\_\_, President of \_\_\_\_\_  
\_\_\_\_\_, Lessee, in that certain Lease-Purchase Agreement ("Lease") dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, hereby certifies as follows:

1. The Leased Premises will be used by the Lessee for the specific purpose of higher education activities for the State of West Virginia.
2. The Leased Premises are essential for the functioning of the Lessee and are immediately needed by the Lessee. Such need is neither temporary nor expected to diminish during the term of the Lease. The Leased Premises are expected to be used by Lessee for a period in excess of the term of the Lease.
3. Funds for the Lease Payments are expected to come from \_\_\_\_\_ account.
4. The Lease was issued under and pursuant to West Virginia law to finance the acquisition of the Leased Premises described therein.
5. Pursuant to the Lease, Lessee is entitled to receive the Leased Premises in consideration for the obligation under the Lease. The Leased Premises will be used in furtherance of the public purposes of Lessee. The Lessee does not intend to sell or to otherwise dispose of the Leased Premises during the term of the Lease.
6. The undersigned has the power and authority to execute this Certificate on behalf of Lessee.

To the best of my knowledge, information and belief, the expectations expressed herein are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, President  
\_\_\_\_\_, Lessee

**Article II.      EXHIBIT A**

(Legal Description of Leased Premises)

**Contract of Lease**

**Article III. CONTRACT OF LEASE**

**THIS CONTRACT OF LEASE**, effective \_\_\_\_\_, 20\_\_, by and between *[INSERT LESSOR'S LEGAL NAME]*, hereinafter referred to as "Lessor," and the *[INSERT INSTITUTION'S LEGAL NAME]*, hereinafter referred to as "Lessee."

**WHEREAS**, pursuant to provisions of W.Va. Code §18B-19-12, the Chief Executive Officer certifies that the space herein leased is necessary for the proper function of *[INSERT INSTITUTION'S LEGAL NAME]*, and that satisfactory space is not available in other buildings now owned or leased by the State; and

**Article IV. NOW THEREFORE, THIS CONTRACT OF LEASE FOR USE BY LESSEE WITNESSETH:**

That for and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee the following described premises:

*Section 4.01* *[INSERT*  
**DESCRIPTION OF LEASED PREMISES --- EXAMPLE:** *Containing*  
*approximately 30,000 square feet, more or less, on the first floor, second floor, third floor and fourth floor, plus a minimum of 1,000 square feet of storage area in the basement, of that certain building commonly known as the Boulevard Building located at 1000 Kanawha Boulevard, East, in the city of Charleston, Kanawha County, West Virginia, together with 25 adjacent (on-site) parking spaces and 30 additional off-site parking spaces.]*

The parties hereto covenant and bind themselves as follows:

**(1) TERM AND NOTICES**

The term of this lease, subject to the provisions hereof, shall begin on \_\_\_\_\_, 20\_\_ and end at midnight on \_\_\_\_\_, 20\_\_. This lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

**Article V. To the Lessee To the Lessor**

*Section 5.01* *[INSERT NAME AND MAILING ADDRESS FOR NOTICES]*

(2) RENT

The Lessee covenants that the Lessee shall pay rent unto the Lessor based on the following rent schedule: *[INSERT RENT SCHEDULE PER SQUARE FOOT --- EXAMPLE:*

*Section 5.02 \$8.00 per square foot for the period July 1, 2007 through June 30, 2008; \$8.50 per square foot for the period July 1, 2008 through June 30, 2009; \$9.00 per square foot the period July 1, 2009 through June 30, 2010; \$9.50 for the period July 1, 2010 through June 30, 2011; and \$10.00 for the period July 1, 2011 through June 30, 2012.]*

Based on said rent schedule, the Lessee shall pay unto the Lessor as rent for the premises herein leased, the sum identified in the following monthly payment schedule which shall be payable upon receipt of invoice from Lessor to the Lessee on the first day of every month for the preceding month during the term of this lease: *[INSERT MONTHLY PAYMENT SCHEDULE*

*Section 5.03 --- EXAMPLE: Twenty Thousand Dollars (\$20,000.00) per month for the period July1, 2007 through June 30, 2008; Twenty-One Thousand Two Hundred-Fifty Dollars (\$21,250.00) per month for the period July 1, 2008 through June 30, 2009; Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) per month for the period July 1, 2009 through June 30, 2010; Twenty-Three Thousand Seven Hundred-Fifty Dollars (\$23,750.00) per month for the period July 1, 2010 through June 30, 2011; and Twenty Five Thousand Dollars (\$25,000.00) per month for the period July 1, 2011 through June 30, 2012.]*

(3) UTILITIES AND OTHER RELATED SERVICES

The Lessor agrees to furnish all utilities and janitorial services for the premises herein leased, with the exception of telephone services which shall be provided by Lessee.

*Section 5.04 [OR INSERT ALTERNATE LANGUAGE IN PLACE OF THE LANGUAGE ABOVE]*

(4) MAINTENANCE

Lessor binds itself to maintain the premises, including the structure of the premises, both interior and exterior; the electrical, HVAC and plumbing fixtures and equipment, except such fixtures and equipment as may be owned by Lessee; and the interior and exterior painting in a good and tenantable condition equal to that of the premises as at the time possession thereof is delivered to the Lessee. If Lessor fails to maintain the interior and exterior structure of the premises, and the electrical, HVAC and plumbing fixtures and equipment owned by Lessor in a good and tenantable condition of repair, the Lessee shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the premises by the Lessee, provided, however, such deficiency was not caused by the neglect or acts of the Lessee. Upon refusal or neglect of Lessor to comply with Lessee's request for the repair or reinstatement of previously-existing conditions, Lessee may, thirty (30) days after receipt of such request by the Lessor, cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed therefor.

(5) TAXES AND ASSESSMENTS

The Lessor will pay taxes and assessments levied on the subject premises during the term of this lease.

(6) FIRE AND HEALTH HAZARDS

The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Lessee, its agents, employees or servants that any public authority may order corrected or removed during the term of this lease. Upon refusal or neglect of Lessor to comply with any such order, the Lessee may comply therewith and deduct the costs and expenses from monthly rentals payable thereafter to the Lessor until the Lessee is fully reimbursed therefor.

(7) SUITABILITY OF PREMISES

Lessor warrants the premises to be suitable for use as a State facility and for the conduct of Lessee's business, and that

there shall be no liability on the part of the State of West Virginia, its officers, agents or employees for any loss or damage to the leased premises, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in a business office, nor any liability on any individual by virtue of any of the provisions of this lease.

Lessor shall have the right to approve of any unusually heavy equipment put on the leased premises.

(8) TRANSFER OR ASSIGNMENT OF LEASE

The Lessee agrees not to transfer or assign this lease, or sublet the subject premises without the written consent of the Lessor.

(9) NEGLECT OF PREMISES

The Lessee shall not commit waste on the premises herein leased, and the premises will be returned to the Lessor at the termination of this lease in substantially as good condition as at the commencement thereof, damages from natural elements, normal depreciation and decay excepted.

(10) DEFAULT BY LESSEE

In the event the Lessee defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty days after receipt of notification, the Lessor may notify Lessee that the lease is terminated, and reenter the premises herein leased.

(11) DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Lessee would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

(12) PROVISIONS FOR IMMEDIATE TERMINATION

It is further agreed by and between the parties hereto that this lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this lease or cause it to be canceled, or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery.

(13) QUIET ENJOYMENT OF PREMISES

The Lessor covenants that at the date of this lease, Lessor was seized of said premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever, and that upon payment of rentals as hereinbefore set forth, it will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder during the term of this lease; that the Lessee shall, at all times during the term of this lease, peaceably and quietly have, hold and enjoy the said leased premises.

(14) CANCELLATION OF LEASE

It is further agreed by and between the parties hereto that the Lessee shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to the last day of the succeeding month.

(15) REMOVAL OF MACHINERY AND EQUIPMENT

It is understood and agreed that all machinery and equipment installed by the Lessee, or placed upon the leased premises incident to Lessee's business, whether annexed to the freehold or not, shall remain the personal property of the Lessee, and Lessee shall have the privilege and right to remove same at any time during the term of this lease provided the premises are restored to as good condition as existed prior to installation of said machinery and equipment, reasonable wear and tear expected.

(16) STRUCTURAL OR OTHER CHANGES TO PREMISES

In the event the Lessee requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this lease to arrive at a fair rental value, if warranted.

(17) IMPROVEMENTS

The Lessor agrees to cause certain improvements to be made to the premises herein leased, consisting of, but not limited to:

**Section 5.05** *[PROVIDE DESCRIPTION OF IMPROVEMENT IF ANY]*

(18) HEADINGS

The headings to the various paragraphs of this lease have been inserted for reference only and shall not in any manner be construed as modifying or amending in any way the express terms and provisions hereof.

(19) PARKING

Lessor agrees to provide, at no additional cost to the Lessee, \_\_\_\_\_ parking spaces immediately adjacent to the leased premises.

(20) ADDITIONAL SPACE

Lessor agrees that Lessee shall have the option of first refusal of up to \_\_\_\_\_ square feet of any additional space that may become available in the leased premises. Lessee shall, within \_\_\_\_\_ days of Lessor's written notice and proof of a bona fide offer of lease, give Lessor written notice of its intention to exercise or decline its option. The additional space shall be leased under the same terms and conditions as provided herein, if space is accepted "as is."

(21) OPTION TO RENEW

Lessor agrees that Lessee may, at its option, extend the term of this lease for two (2) additional one-year periods by giving written notice unto the Lessor sixty (60) days prior to the expiration of the then-current lease term. Any increase in rent during the extension periods shall not exceed five percent (5%) per annum.

(22) SEVERABILITY

Any provision of this lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this lease.

(23) NON-SMOKING FACILITY

The Lessee will make every effort to assist the Lessor to be in compliance with the non- smoking building ordinance issued by the \_\_\_\_\_ County Health Department.

(24) ACCESSIBILITY REQUIREMENTS

The Lessor hereby agrees that any renovations made within the space herein leased shall comply with the accessibility standards established and set forth by the Americans with Disabilities Act of 1990, whether requested by the Lessee or required by law.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

\_\_\_\_\_, Lessor

By \_\_\_\_\_

*Section 5.06 [TYPE NAME & TITLE]*

\_\_\_\_\_, Lessee

By \_\_\_\_\_

*Section 5.07 [TYPE NAME & TITLE]*

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, TO-WIT:

I \_\_\_\_\_, notary public in and for said county and state, do hereby certify that \_\_\_\_\_, who as \_\_\_\_\_ signed the foregoing lease for \_\_\_\_\_, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said corporation.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. My commission will expire \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF WEST VIRGINIA COUNTY OF KANAWHA, TO-WIT:

I \_\_\_\_\_, notary public in and for said county and state, do hereby certify that \_\_\_\_\_, who, as \_\_\_\_\_, signed the foregoing lease for the \_\_\_\_\_, Lessee, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said agency.



Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_. My commission will expire  
\_\_\_\_\_, 20\_.


\_\_\_\_\_  
NOTARY PUBLIC

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_, Attorney General

By \_\_\_\_\_.



**Purchase Order**

	<p><b>West Virginia Higher Education Policy Commission</b>                  1018 Kanawha Boulevard, East, Suite 700                  Charleston, WV 25301-2827</p> <p>Voice: (304) 558-0281                  Fax: (304) 558-0259</p>	<p><b>Purchase Order</b></p> <p><small>Please show this number on all packages and documents related to this order.</small></p>
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<b>Vendor:</b>	<b>Ship to:</b>	<b>Invoice to:</b>
VCOASIS:	WV Higher Education Policy Commission 1018 Kanawha Blvd., E, Suite 700 Charleston, WV 25301	<a href="mailto:purchase@wvhepc.edu">@wvhepc.edu</a>  WV Higher Education Policy Commission 1018 Kanawha Blvd., E, Suite 700 Charleston, WV 25301

P. O. Date	Buyer	Ship Via	F. O. B.	Terms	Delivery Date Required
	MB		Destination	Net 30	

Item	Quantity	U/M	Description	Unit Price	Extended Price

AUTHORIZED AGENT:	DISCOUNT	
AUTHORIZED SIGNATURE:	ADDL. CHARGES	
ATTORNEY GENERAL: (if required)	<b>PURCHASE ORDER TOTAL</b>	<b>\$</b>

ACCOUNTING INFORMATION: This order is tax exempt. Exemption #:550-517-092

BFY	Fund	Department	Unit	Approp. Unit	Object	Sub-Object	Program	Program-Period	Total
	<b>Total</b>								

## TERMS AND CONDITIONS

1. **ACCEPTANCE:** Vendor shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Vendor are objected to and are hereby rejected, unless otherwise provided for in writing by the Institution and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the WV Higher Education Policy Commission, Council for Community and Technical Education or Governing Board, whichever has jurisdiction pursuant to W. Va. Code, shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Vendor without the Institution's consent.
4. **INSTITUTION:** For the purposes of these Terms and Conditions, the "Institution" means the institution purchasing goods and services for which a Purchase Order has been lawfully issued to the Vendor.
5. **CANCELLATION:** The Institution may cancel any Purchase Order/Contract upon 30 days written notice to the Vendor.
6. **COMPLIANCE:** Vendor shall comply with all federal, state and local laws, regulations and ordinances, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Vendor shall give prior notification and obtain the approval of the Institution. Time is of the essence of this Order and it is subject to termination by the Institution for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Claims Commission.
9. **HOLD HARMLESS:** The Institution will not agree to hold the Vendor or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this Order shall be binding unless agreed to in writing by the Institution.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS:** Payments may only be made after the delivery of goods or services.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Institution. Rejection of goods or materials due to nonconformity with the terms, conditions or specifications of this Order, whether held by the Institution or returned to the Vendor, will be at the Vendor's risk and expense.
16. **VENDOR:** For the purposes of these Terms and Conditions, the "Vendor" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from the Institution.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Institution.
18. **TAXES:** The State of West Virginia (the Institution) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Vendor of any of the provisions of this contract, the Institution reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Vendor. The Vendor shall be liable for damages suffered by the Institution resulting from the Vendor's breach of contract.
20. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Institution; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.



**Agreement Addendum WV-96**

**The latest version of this form can be found at:**

<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

**Purchasing Affidavit**

**The latest version of this form can be found at:**

<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

**Bid Bond Forms**

**All Official Bond Forms Approved by the WV Attorney General's Office can be found at:**

<http://www.state.wv.us/admin/purchase/forms2.html>

**Vendor Registration Form**

**The latest version of the Vendor Registration Form can be found at:**

<http://www.state.wv.us/admin/purchase/vrc/wv1.pdf>

**Designation of Buyer Form**

**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
FORM FOR DESIGNATION OF A BUYER**

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(Institution)

I, as Chief Procurement Officer/Director of Procurement for the institution named above, hereby designate the individual whose name and signature appear below as a Buyer for the institution in accordance with §133-30-7.2, of the Commission’s Procedural Rules. I certify that this individual meets the requirements for a Buyer as contained in §133-30-11.1.a of the Commission’s Procedural Rules.

This individual shall have full authority to act as the designee of the Chief Procurement officer for the following matters (place an “X” in the boxes below to indicate authority granted). This designation shall continue until rescinded or superseded in writing.

- Purchase and acquisition of materials, supplies, equipment, printing and services up to and including \$ \_\_\_\_\_
- Receiving materials, supplies, equipment, printing and services.
- Inventory management for materials, supplies and equipment
- Disposal of obsolete or surplus materials, supplies and equipment.

*Other Limitations of Authority:* The individual designated as a Buyer shall not have authority to act as the designee of the Chief Procurement Officer in the following matters: (if there are no other limitations, write “None”)

---

Name of Buyer  
(please print or type)

---

Signature of Buyer

---

Name of Chief Procurement Officer (CPO)  
(please print or type)

---

Signature of CPO

Originals to be filed with: Executive Vice Chancellor for Administration (WVHEPC)  
WV State Auditor’s Office  
WV Attorney General’s Office

**Designation of Chief Procurement Officer Form**

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
FORM FOR DESIGNATION OF CHIEF PROCUREMENT OFFICER

\_\_\_\_\_

(Institution)

I, as President or other administrative head of the institution named above, hereby designate the individual whose name and signature appears below as the Chief Procurement Officer/Director of Procurement for the institution in accordance with §133-30-6.2, of the Commission’s Procedural Rule. I certify that this individual meets the qualifications for a Chief Procurement Officer/Director of Procurement as stated in §133-Series 30-11.2.a.

This individual, unless otherwise stated below, shall have full authority to act as the designee of the President, or other administrative head, for purchase, acquisition, receipt of and inventory management of all materials, supplies, equipment, services and printing, and for disposal of obsolete or surplus materials, supplies and equipment. This designation shall continue until rescinded or superseded in writing.

Limitations on Delegated Authority: In accordance with Series 30, the Commission’s procedural rule on Purchasing, the individual designated as Chief Procurement Officer shall not have authority to act as the designee of the President in the following matters: (if there are no exceptions, write “None”)

\_\_\_\_\_  
Name of Chief Procurement Officer  
(please print or type)

\_\_\_\_\_  
Signature of Chief Procurement Officer

\_\_\_\_\_  
Name of President  
(please print or type)

\_\_\_\_\_  
Signature of President                      Date

Originals to be filed with:    Executive Vice Chancellor for Administration (WVHEPC)  
   WV State Auditor’s Office  
   WV State Attorney General’s Office



## **Records Retention Policy**

### **Purpose**

The purpose of this policy is to provide for the systematic review, retention, and destruction of records received or created by the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) (together, “the agency”). This policy is designed to ensure compliance with federal and State laws, rules, and regulations pertaining to government record management; to preserve records essential to the operation of government; to protect against the accidental or unintentional destruction of agency records; and to facilitate efficient and economical agency operations by providing for the proper creation, utilization, maintenance, retention, preservation, and disposal of agency records.

### **Scope**

This policy applies to all agency employees.

### **Definitions**

“Agency Records Manager” means an employee designated by the Chancellor to manage the agency’s records inventory and to act as a liaison with the State Records Administrator.

“Disaster” means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this State, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

“Nonrecord Material” means any document, electronic file, book, paper, photograph, sound recording or other material, regardless of physical form or characteristic, that is not a State Record or otherwise required by law to be retained by the agency. Examples include routine communications (i.e., “while you were out” messages, etc.), internal meeting notices, cover letters or transmittal memoranda, drafts, notes, and duplicate copies of State Records that are not being stored in the official location or with the official custodian.

“Preservation Duplicate” means a copy of an essential State Record that is used for the purpose of preserving such State Record pursuant to applicable State law.

“Record” means a document, electronic file, book, paper, photograph, sound recording or other material, regardless of physical form or characteristic, made or received by the agency pursuant to law or in connection with the transaction of official agency business. Library materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of “Record” for purposes of this policy.

“Record Retention Schedule” means a roster of approved retention periods for the records of the agency as set forth in the format prescribed by the State Records Administrator.

“Retention Period” means the period of time during which Records must be held before they may be legally disposed of. The Retention Period is usually stated in terms of months or years, but sometimes is contingent upon the occurrence of an event, e.g., employee termination or contract expiration. The Retention Period includes the life span of each Record from creation to final disposition.

“State Record” means a record of the agency or any record designated or treated as such under State law.

“State Records Administrator” means the Secretary of the Department of Administration or his or her designee.

### **Categories of Records to be Preserved**

Not all documents or materials created or received by the agency constitute State Records that must be retained for designated periods of time. Rather, only materials that are State Records and that are within the following categories are essential records that shall be preserved in accordance with this policy:

**Category A:** Records containing information necessary to the operation of government in the emergency created by a disaster, including, but not limited to Records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the agency and the State and of persons directly affected by the agency’s activities;

**Category B:** Records not within Category A, but containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of government in the resumption of operations after a disaster; and

**Category C:** Records with historic value justifying permanent retention.

### **Preservation Duplicates**

Instead of maintaining an original record, the agency records manager may make or cause to be made Preservation Duplicates or may designate as Preservation Duplicates existing copies of essential State Records.

Preservation Duplicates shall be durable, accurate, complete, and clear and made by means of any format or process whereby the image of the original State Record is preserved in a form in which the image thereof is incapable of erasure or alteration and from which a reproduction that truly and accurately depicts the image of the original State Record may be retrieved.

A Preservation Duplicate shall have the same force and effect for all purposes as the original record, whether the original record is in existence or not. A certified copy of a Preservation Duplicate has the same force and effect as a certified copy of the original Record.

Upon creation of a Preservation Duplicate from which a reproduction of the stored State Record may be retrieved, the division in custody of the State Record may destroy or otherwise dispose of the original in accordance with the provisions of this policy.

## **E-Mail and Other Electronic Records**

Divisions are obligated to preserve and safeguard emails and other electronic records that constitute State Records.

If email or other electronic records constitute State Records, then those materials must be retained and disposed of in accordance with the retention periods set out in the division's Record Retention Schedule.

E-mail and other electronic records may be retained in hard copy, by electronic archive, in removable storage devices, or in another unerasable, unalterable format or medium as discussed in Section 3.2.a. Once an e-mail or electronic record is saved in another format, however, there is no obligation to retain it in multiple forms.

While not all e-mail or other electronic records are State Records subject to retention for purposes of this policy, all agency e-mail and electronic records are agency records that may be subject to disclosure in accordance with the Freedom of Information Act. Therefore, they should be retained for their operationally useful life before they are destroyed or otherwise disposed of.

## **Nonrecord Materials**

Nonrecord Materials are not State Records and, therefore, shall not be included on the agency's retention schedules. Instead, Nonrecord Materials shall be retained only as long as necessary to complete the action or resolve the issue that is the subject of the material. If there is any question about whether an item is a State Record or Nonrecord Material, contact the Agency Records Manager for a determination.

## **Safekeeping and Maintenance of State Records**

Individual divisions within the agency are responsible for ensuring that all Records, whether State Records or Nonrecord Materials, and including electronic records, are secured so as to provide appropriate confidentiality and protection from unauthorized inspection, theft, or physical damage.

All Records, including electronic records, must be easily retrievable for examination by authorized individuals, including auditors, and for timely response to Freedom of Information Act requests.

## **Electronic Records**

The agency shall utilize electronic records in place of physical records when appropriate. The agency may convert a physical Record to an electronic Record for retention purposes, but shall note this practice on the Record Retention Schedule.

Electronic Records shall be treated the same as physical Records with regard to retention and disposal.

Electronic records, including Preservation Duplicates described in Section 3.2 above, shall be stored in a medium that is incapable of erasure or alteration or on other electronic storage media capable of storing digitized documents so long as:

- The medium is stored to maximize its life by minimizing exposure to environmental contaminants;

- At least two copies of the Preservation Duplicate are made, and one copy is stored in an off-site location;

The division in custody of the State Record modifies its archiving process as technology changes so that the Preservation Duplicates are readily accessible, which may include migrating the Preservation Duplicates to a different medium or different file formats; and

The division in custody of the State Record periodically examines the medium to determine if the Preservation Duplicates remain readable and intact.

The agency shall maintain a separate records drive for electronic records, which allows users to copy State Records into folders designated for such purpose, but not delete them. This drive shall be backed up weekly, and the backup drive shall be located at WVNET's Morgantown office. The backup drive for WVNET's electronic records shall be located at the State's Data Center in Charleston.

Any Record deemed to have historical value must be maintained in its original format. No Record of historical value shall be converted to electronic format as an original without the prior written approval of the State Records Administrator and the State Archivist.

If a division needs assistance in developing measures to protect the confidentiality of its Records, either physical or electronic, it should contact the agency's Privacy Officer.

### **Record Retention Schedules**

The agency's Record Retention Schedule, the most recent approved version of which is here [\[INSERT LINK TO RETENTION SCHEDULE\]](#) details all State Records that the agency must retain for the specified periods of time necessary to satisfy the agency's business and legal obligations, as well as to preserve the agency's history. All State Records must be retained and disposed of in accordance with this policy and the agency's Record Retention Schedule.

Each division within the agency is responsible for developing its own Record Retention Schedule in accordance with guidance provided by the Agency Records Manager. The Agency Records Manager shall transmit these schedules to the State Records Administrator for approval.

Upon approval of the agency's Record Retention Schedule, all State Records within each division shall be maintained and disposed of in accordance with the approved Record Retention Schedule.

If a division possesses a category of Records not accounted for in its Record Retention Schedule, the division's Official Records Custodian shall contact the Agency Records Manager to determine whether to supplement the division's approved Records Retention Schedule.

### **Disposal of Records**

No State Record shall be destroyed or otherwise disposed of by any division within the agency unless such disposal is in accordance with an approved Record Retention Schedule, as provided for in Section 5.0 above. However, if a State Record is involved in litigation, audit, or other action preventing its destruction, it shall be retained by the agency even if it would otherwise be subject to disposal per the Record Retention Schedule.

Nonrecord Materials or materials not included within the definition of State Record may be destroyed at any time by the division in custody of such materials if such destruction is not otherwise prohibited by law.

Each division is responsible for periodically ensuring the destruction of all Nonrecord Materials and State Records that have reached the end of their retention period. State Records that have been identified as Permanent Records must be permanently retained in a designated storage area and/or archived in accordance with the approved Record Retention Schedule.

Whether a document is a State Record or Nonrecord Material, it should be destroyed in an appropriate manner based on its contents, taking into consideration privacy and confidentiality concerns. Acceptable destruction methods include:

Recycling. – Generally, recycling is appropriate for all paper documents that do not contain personal, confidential, or certain financial information.

Secure Destruction. – Using a crosscut shredder or agency-approved shredder service for all paper documents that contain personal, confidential, or certain financial information. This includes, but is not limited to, all documents that contain attorney-client communications, student education records, health-related information, personnel records, and certain financial information. Records awaiting secure destruction must be stored in a secure location. Divisions using an agency-approved professional shredder service must obtain a certificate of destruction from the service.

Each division shall consult with the Senior IT Systems Administrator regarding the destruction of electronic records. If the division cannot determine whether a State Record or Nonrecord Material should be recycled or shredded, the director or his or her designee shall consult with the agency's Privacy Officer or Agency Records Manager for a determination.

### **Official Record Custodians**

The agency's Record Retention Schedule identifies specific divisions as the Official Record Custodian for certain categories of the agency's State Records. Another division (i.e., a division not listed as the Official Record Custodian) may keep courtesy copies of these records as long as necessary for that division to address the transaction or issue. However, the non-custodial division should not keep courtesy copies of records longer than two years after the subject transaction has been completed or the issue has been resolved.

All divisions have a duty to ensure that any records contained in their courtesy copies are provided to the State Record's Official Record Custodian and that the courtesy copies do not contain any State Records different than those maintained by the State Record's Official Record Custodian.

Individual divisions shall designate an employee to manage the destruction of all State Records and Nonrecord Materials for that division.

The Agency Records Manager shall submit to the State Records Administrator a list of the agency's Official Record Custodians. The Agency Records Manager shall review and update this list semi-annually.

### **References**

- *Records Management and Preservation of Essential Records Act*, W. Va. Code § 5A-8-1, et seq.
- *Rules for the General Administration of Records Management and Preservation*, W. Va. Code R. § 148-12-1, et seq.
- *Freedom of Information Act*, W. Va. Code § 29B-1-1, et seq.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL  
COLLEGE EDUCATION

## **SAFETY POLICY**

February 2020



West Virginia  
Higher Education  
Policy Commission

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## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### **SAFETY POLICY**

February 2020

#### **Policy Statement**

The West Virginia Higher Education Policy Commission (Commission) is committed to assuring that the employees, guests and or visitors to the agency are provided with a safe and healthy working environment. The Commission strives to maintain safe working conditions and to take preventive measures to ensure the ongoing safety and welfare of all individuals conducting business within the agency.

Employees of the Commission are provided a copy of the Safety Policy. Employees are required to review the document and abide by the procedures. It is the responsibility of each employee to conduct all tasks in a safe manner, complying with all local, State, and federal health and safety regulations.

A Safety Director will be appointed to oversee the health and safety requirements of the agency. In addition, the Safety Director will serve as the Chair of the Safety Policy Committee and ensure compliance with the safety policy established for the agency. Floor Captains for each floor will be appointed by the Division Directors to assist with policy compliance. Alternate Floor Captains will also be appointed to complete these duties in the absence of a Floor Captain.

The Safety Policy will be reviewed periodically by members of the Safety Policy Committee to ensure that it remains up to date.

#### **Duties and Responsibilities**

- Safety Director
  - Oversee creation of policies and procedures.
  - Ensure compliance with policies and procedures.
  - Ensure delivery of training.
  - Coordinate floor captains.
  - Oversee expenditures (and budget, if applicable).
  - Serve as Chair of Safety Policy Committee.
  - Maintain records of Safety Policy Committee.
  
- Floor Captains/Alternate Floor Captains
  - Monitor safety issues and perform inspections on assigned floor.
  - Ensure policies are being followed on assigned floor.
  - Report non-compliance to Safety Director.
  - Route safety complaints to Safety Director.
  - Ensure complete evacuation on assigned floor.
  - Account for all employees assigned to floor during evacuation.

- Receive CPR training.
- Division Directors
  - Assign Floor Captains and Alternates.
  - Review/certify employees have complied with procedures.
- Employees
  - Attend training sessions.
  - Comply with safety policies and safe work practices.
  - Report safety concerns/violations to applicable floor captain.
  - Participate in fire drills.
  - Report all on-the job accidents or incidents immediately, no matter how seemingly trivial.
- Safety Policy Committee (see Appendix A)
  - Develop and implement Safety Policy.
  - Serve as review board for all accidents and incidents to assess cause and prevention.
  - Develop safety activities and training.
  - Review annual inspection reports.
  - Follow-up on annual inspection citations.
  - Meet on a regular basis to discuss safety-related matters.
  - Record minutes of regular Safety Policy Committee meetings.

### **General Office Safety**

Offices and work areas should be kept neat and orderly. Each employee is responsible for ensuring their work area is free of obstructions and hazards. Falls are the most common cause of injury in offices, accounting for almost half of all office accidents. The next most significant cause of injury is the handling and lifting of goods, materials and equipment. Regular housekeeping in offices goes a long way toward preventing accidents. Employees should ensure that the general layout and storage of items minimizes possible hazards. Particular attention should be given to the condition of floors and floor coverings; trailing electrical leads or computer cabling; storage of items, particularly heavy ones, on shelves above shoulder height; and safe methods of reaching up. A checklist for office safety is attached to this policy (see Appendix C). Employees should use this to check the safety of their own office and surrounding area and report any problems to the Floor Captain or to the Safety Director.

### **Emergency Notification System**

Staff are notified of time-sensitive emergency or weather-related events via a text alert system. Official messages related to such events are sent via text and e-mail messages to employee cell phones and/or agency e-mail accounts.

## **Risk Assessment**

Members of the Safety Policy Committee, in conjunction with Floor Captains, must evaluate all office space occupied by the Commission for hazard and evaluate it for risk. If any of their assessments identify a significant hazard, the Floor Captain of the floor at issue should document the hazard in writing (see Appendix F). Hazards may include but are not limited to the following:

- (i) blocked doorways,
- (ii) flammable items and debris,
- (iii) electric space or floor heaters,
- (iv) cooking appliances (toasters, crockpots, etc.),
- (v) burning candles or other open flames, or
- (vi) halogen lamps.

## **Inspections**

Floor Captains, in conjunction with the Safety Director, will be responsible for arranging inspections on each floor. Safety inspections are to occur on each floor on a semi-annual basis. The Floor Captains shall make a formal report (see Appendix D) of each inspection, including recommendations for corrective action to be taken for any findings. The reports will be filed with the Safety Director and will be reviewed by members of the Safety Policy Committee.

A follow-up of each inspection will be undertaken by the Safety Director and/or Floor Captain within one month after the inspection to identify progress in resolving cited actions.

## **Fire Prevention**

Corridors and staircases in the building form the escape routes and must be kept clear of obstructions. They should not contain anything that could itself be the source of fire, or which is flammable. This is especially important in the case of staircases. Doors at staircase landings and across corridors are fitted with self-closing devices so that they are able to minimize the spread of smoke and fire. It is therefore important that they are not wedged open.

Open flames in the form of burning candles present risk for an accidental fire and are prohibited. Another risk for accidental fire is the use of electrical space or floor heaters. Special care must be exercised when using a heater to ensure that it is placed away from the walls or other items and that it is not left unattended. Employees are responsible for turning off all electrical space or floor heaters.

Kitchen appliances such as coffee pots, toasters, toaster ovens, crockpots, air fryer, instant pot, or other personal electrical appliances pose a safety hazard and fire risk if left unattended. In addition, the appliances may pose disruptions to electrical power and may create odors to which other employees may be sensitive. Employees must use caution when using any of these types of appliances and are responsible for the safe operation to ensure no safety hazards exist.

## **Fire and General Evacuation Procedures**

If you notice a fire you should immediately activate one of the alarms which are located on each floor on the wall by the stairwell door and on the wall by the fire escape door to the outside of the building. The alarm is a continuous bell which is sounded throughout the building. **THE ALARM DOES NOT AUTOMATICALLY NOTIFY THE FIRE DEPARTMENT.**

Regardless of the size of the fire, you should activate the building's fire alarm system **BEFORE** trying to extinguish the flames.

The person who activates the building's fire alarm should ensure that the Fire Department is notified by either reporting to someone in authority (Safety Director or Executive Vice Chancellor for Administration's staff) and asking them to do so, or by dialing **911** from a telephone as you evacuate the area and away from the fire alarms.

If you hear the fire alarm, you should immediately leave the building using the **INSIDE** stairwell. The inside stairwell is the primary escape route which is an enclosed structure separate from the main building. In the event the stairwell is blocked, you are to vacate the building using the outside fire escape stairs which is the secondary escape route. **DO NOT USE THE ELEVATOR.**

In the event of a power outage or other circumstance which may cause the fire alarm to malfunction or the internal telephones, cell phones, computer system or other communication devices to be inoperable, the Safety Director will contact the Floor Captains to assist with verbally notifying all employees to evacuate the building.

Employees shall remain calm and quiet during the evacuation in order to hear any emergency instructions that may be announced. You should quickly take all essential personal possessions such as purses, car keys, coats, etc. with you as you will not be allowed to re-enter the building during the evacuation period, leave your work area, turning off your lights and closing your office door on your way out, and report to your designated assembly area. Do not waste time shutting down computers or gather work documents.

The Floor Captain is responsible for closing the main door or doors to the floor. The doors should not be locked in order to allow immediate access by emergency personnel. The Floor Captain shall check all offices, including restrooms, to see that all employees have vacated the floor.

The Floor Captain will be responsible for determining in advance any employee that may need assistance in vacating the building and for pre-assigning another employee to assist that individual with the evacuation. The employee should wait in the hallway area by the elevators for assistance in evacuating the building.

On leaving the building, employees are to assemble at the outside designated area for each floor as determined by the evacuation plan map (see Appendix G). The evacuation plan maps indicate the position of fire alarms, fire extinguishers, exit routes and assembly points for each floor. All employees are expected to familiarize themselves with the location of this equipment and their floor's assembly point. The Floor Captain will be responsible for accounting for all employees

assigned to their floor. This will be accomplished by the Floor Captain checking off the names of employees on an up-to-date list of employees maintained on the Floor Captain Employee Check-off List (see Appendix H). The check-off list will be attached to a clipboard that is to be kept in a central location and taken out of the building by the Floor Captain during an evacuation.

The Floor Captain shall notify the Safety Director or other emergency personnel of any employee that is not accounted for or that needs assistance in vacating the building.

It is imperative that you gather in your designated assembly point and not go to a different location or gather in any area that is not a designated assembly point. In the event of an actual emergency, this is how the Floor Captains account for employees. If you are not where you are supposed to be, the Floor Captains may assume that you are still in the building and deploy first responders to locate you, at great unnecessary risk.

Fire extinguishing equipment is provided on each floor but should only be used:

- (i) by those *trained* in its use,
- (ii) if the fire is *very small*,
- (iii) if by so doing you *do not place yourself in any danger*, and
- (iv) *after activating the building's fire alarm* and ensuring that the Fire Department has been called.

Employees may only re-enter the building when the Safety Director has determined that it is safe to do so.

### **Testing of Evacuation Plan**

The Safety Committee may test various aspects of the evacuation plan on a deliberate, systematic, and periodic basis. Such testing will familiarize key personnel with their duties and responsibilities and will provide the opportunity for all employees to practice the evacuation plan. Evacuation plan testing may occur without prior notice or announcement, thus, each evacuation should occur as if there is a threat or emergency. Members of the Safety Policy Committee will evaluate the effectiveness and/or any deficiencies of the evacuation.

### **Shelter in Place**

Shelter in Place (SIP) is a technique to protect people from the effects of exposure to accidental or intentional releases of hazardous materials. The basic technology of SIP is to separate cleaner indoor air from potentially contaminated outdoor air.

In many cases, the worst thing you can do in a chemical emergency is to get in your car and try to evacuate. Not all chemicals are visible, and you may drive into a plume with high concentrations of dangerous chemicals. Cars are designed to be well ventilated to circulate air flow, and therefore, are not well-suited for sheltering in place.

If a SIP alert is sounded, employees should move as quickly as possible to the conference rooms on the 9<sup>th</sup> floor. Make sure all office windows are closed before leaving the floor for the conference

room. Employees are to report to their respective Floor Captain upon arriving at the conference room. Floor Captains will be responsible for accounting for all employees assigned to their floor using the check-off list attached to their clip-board (see Appendix H). Once all employees have reached the conference rooms, the rooms will be sealed by trained employees to minimize air infiltration.

No one will be able to leave the area until the “All Clear” message has been received from emergency response officials. Sheltering in place is a short-term protective measure which typically lasts a few hours at most. When the “All Clear” has been received, all employees must evacuate the building until it has been well ventilated. Evacuate and move to the pre-determined meeting location and check in with your Floor Captain. Employees may only re-enter the building when the Safety Director has determined that it is safe to do so.

Shelter in Place techniques may also be used when there is an Active Shooter situation or other form of violence in the area. In those situations, you are to remain in the building and away from external windows until notified by law enforcement personnel that the area is safe and the SIP restriction is lifted.

### **Medical Emergencies**

In the event of a medical emergency, **dial 911** to request emergency medical personnel assistance. The Floor Captain should be notified immediately and take appropriate action to assess the situation which includes ensuring that emergency medical personnel have been requested. The Safety Director should be contacted to offer assistance to the Floor Captain if necessary.

If emergency medical personnel have been requested, the Floor Captain shall assign someone to meet them at the elevator to direct them to the sick or injured person.

Following the initial assessment, a determination will be made with the employee, if possible, on whether or not family members or others listed on the employee’s emergency contact sheet should be notified. The Division of Human Resources and the Office of the Executive Vice Chancellor for Administration have a complete listing of employees and their emergency contact information.

Employees are required to complete an Accident/Medical Emergency Report Form (see Appendix F) for all work-related accidents and medical emergencies that occur while an employee is on duty.

### **First Aid Procedures**

Employees shall immediately report any job-related injury or illness, regardless of severity, to his or her supervisor, the Floor Captain, and the Workers Compensation coordinator in Human Resources. The employee shall also complete the Accident/Medical Emergency Report Form and forward it to the appropriate Floor Captain within 24 to 48 hours of the accident or incident. The Safety Director will investigate all reports to determine what occurred and if any agency action is required to remediate an unsafe working condition.

First-aid kits are maintained on each floor for use in treating minor accidents. The first-aid kits are to be checked on a monthly basis and restocked as appropriate. The names of all Floor Captains and Alternates are posted on each floor and these individuals are to receive entry-level first-aid training.

### **Electrical Safety**

Only electrical equipment that is properly installed and maintained should be used. This applies to all electrical equipment in use, including personal items. Use of multiple extension cords, adapters, or other electrical supply devices must be avoided. All equipment should be regularly inspected and, where necessary, subject to electrical test. Employees should routinely check that their electrical equipment and/or appliances are not damaged and that there are no obvious signs of misuse such as discolored plug tops and worn cables. Any item that becomes faulty should be taken out of service.

Equipment and furniture should be arranged so as to avoid the need for wires and cords to trail across floors. Where these cannot be avoided, rubber strips should be used to reduce the risk of tripping.

### **Unauthorized Personnel**

An unauthorized person is someone who does not have authority to be in the area in question. Unauthorized persons are not allowed access to offices or work areas and may not use any office equipment wherever situated in the building. Visitors to the agency should be instructed to report to the appropriate division or departmental office.

All unauthorized individuals are to be asked to leave the building. In the event there is resistance, contact your supervisor, Floor Captain, or Safety Director to request assistance in having the individual removed from the building. Do not grab, touch, or threaten the individual. Immediately report all instances of this nature to the Floor Captain and/or Safety Director.

### **Active Shooter**

In the event of an active shooter, follow the “Run – Hide – Fight” discipline:

**RUN:** If a safe escape is possible

- Leave your belongings behind
- Do not delay – GET OUT!
- Evacuate regardless of whether others agree to follow
- Do not stop to treat or move the wounded
- Prevent others from entering
- Call 911 when you are safely outside

**HIDE:** If you cannot get out safely

- Lock or barricade doors

- Turn off room lights
- Spread out – don't huddle together
- Stay out of the shooter's view
- Be quiet and silence your phone
- Call 911 only if it is safe to do so

**FIGHT:** Only as a last resort

- Be physically aggressive
- Use improvised weapons
- Fight with all-out commitment
- Fight to incapacitate the shooter
- Don't stop fighting until the attacker stops moving

When police officers arrive:

- Drop items in your hands. (e.g., bags, jackets)
- Raise hands and spread fingers
- Keep hands visible at all times
- Avoid pointing, screaming or yelling
- Avoid running toward the officers
- Do not ask questions when evacuating
- Guns may be pointed at you
- Officers will be loud and demanding
- Follow all instructions

Remember, police initially are not there to help you or other victims – they are there to stop the attacker. Once the threat has been removed, rescue teams will be allowed to treat the wounded. Do not leave the area until law enforcement authorities have instructed you to do so.

## **Elevators**

If an elevator fails to respond to a call or is reported to be operating improperly, please notify the building maintenance personnel. If you become entrapped in an elevator, press the elevator telephone button. Pressing the telephone button places a call to Thyssen Krupp Elevator Company's 24-hour maintenance service line. A Thyssen Krupp Elevator representative will come on the speaker and ask you questions to determine if there is entrapment or malfunction. Thyssen Krupp Elevator will then page a maintenance technician, if necessary, for repair.

**DO NOT ATTEMPT TO PRY OPEN THE DOORS. ALSO, DO NOT ATTEMPT TO EXIT THE ELEVATOR UNLESS INSTRUCTED TO BY EMERGENCY SERVICES PERSONNEL, ESPECIALLY IF ELEVATOR IS BETWEEN FLOORS.**



## **Smoking Policy**

Smoking is prohibited in all offices, conference rooms, corridors, workrooms, storage areas, fire escapes, and restrooms of the Commission. Signs are posted in conference rooms, restrooms and on floors occupied solely by the Commission staff indicating that smoking is prohibited.

Employees who desire to smoke may do so during any authorized break period provided they do so in an area exterior to the Boulevard Tower Building.

## **Reporting Safety Hazards/Concerns**

An employee noticing a health or safety problem that they are not able to correct themselves should immediately tell their supervisor, Floor Captain, or the Safety Director. The employee shall complete the Hazardous Concern Report form (see Appendix F) and submit it to the Safety Director.

## **Driver Safety**

All employees who drive either their personal vehicles or the agency's vehicles for business purposes are required to successfully complete the West Virginia Board of Risk and Insurance Management online driver training program and comply with all traffic safety and motor vehicle laws when operating any vehicle with on agency business.

## **Seat Belts**

All employees who drive either their personal vehicles or the agency's vehicles for business purposes must use the seat belt restraint in accordance with West Virginia State Law. In addition, the driver is responsible for assuring that all passengers are also using seat belts before the vehicle is in motion.

## **Health and Safety Training**

Employees will receive training and instruction in routine health and safety matters. All employees will be informed about the proper procedures regarding:

- (i) action in the event of fire or emergency evacuation, or shelter in place,
- (ii) action in the event of an accident or medical emergency,
- (iii) their responsibility for following safety procedures, including the responsibility for reporting health and safety problems and how this should be done, and for cooperating with colleagues, and
- (iv) any specific responsibilities they have in relation to health and safety.

The need for specialist training should be identified by supervisors and Division Directors and all requests for such training should be directed to the Safety Director.

## **APPENDICES**

- Appendix A -- Safety Policy Committee
- Appendix B -- Floor Captains
- Appendix C -- General Office Safety Checklist
- Appendix D -- Inspection Checklist
- Appendix E -- Accident/Medical Emergency Report Form
- Appendix F -- Hazardous Concern Report Form
- Appendix G --Evacuation Plan Maps
- Appendix H --Floor Captain's Employee Check-off List

Appendix A

**Safety Policy Committee  
February 2020**

- Cindy Anderson, Safety Director
- J.R. Luyster
- Karen Martin
- Jeannie Reed
- Chris Treadway
- Vacant
- Vacant

Appendix B

**Floor Captains and Alternates**

February 2020

**Eleventh (11<sup>th</sup>) Floor**

Floor Captain – Vacant

Alternate – Vacant

**Tenth (10<sup>th</sup>) Floor**

Floor Captain – Cindy Anderson

Alternate -- Molly Cassis

**Ninth (9<sup>th</sup>) Floor (includes Presidents' Conference Room and Large Conference Room)**

Floor Captain – Staff member conducting meeting will be responsible party.

**Ninth (9<sup>th</sup>) Floor (Division of Academic Affairs)**

Floor Captain – Vacant

Alternate – Jelayne Crosier

**Eighth (8<sup>th</sup>) Floor**

Floor Captain – Victoria Timbers

Alternate -- Chad Scott

**Seventh (7<sup>th</sup>) Floor**

Floor Captain – Vacant

Alternate – Deloris Vance

**Sixth (6<sup>th</sup>) Floor**

Floor Captain – Janene Seacrist

Alternate - Angie Kerns

**Fifth (5<sup>th</sup>) Floor**

Floor Captain – Judy Kee Smith

Alternate - Karen Martin

**Fourth (4<sup>th</sup>) Floor**

Floor Captain – Brandon Hughes

Alternate – Heather McChesney

**Second (2<sup>nd</sup>) Floor**

Floor Captain – Vickie Hairston

Alternate - Trish Humphries

## Appendix C

### General Office Safety Checklist

It's every employee's responsibility to be aware of possible safety hazards. If you observe one of the conditions on the following list or any other possible hazardous situation, report it to your supervisor or Floor Captain immediately.

- Slippery floors and walkways
- Tripping hazards, such as miscellaneous items improperly placed on the floor
- Missing (or inoperative) entrance and exit signs and lighting
- Poorly lighted stairs
- Loose handrails
- Loose, open or broken windows
- Dangerously piled supplies or equipment
- Unlocked doors
- Electrical equipment, including small appliances such as coffee pots, left operating
- Evidence of any equipment running hot or overheating
- Open doors on electrical panels
- Blocked hallways or aisles
- Blocked fire extinguishers or sprinklers
- Blocked fire doors or fire escape exits
- Evidence of smoking in non-smoking areas

## Appendix D

### Inspection Checklist

Floor captains should periodically (semi-annually) inspect the area for which he or she has responsibility for safety hazards. At a minimum, check the following items. If you cannot check the item, note needed action or action taken in the space below.

#### Common areas

- No articles are obstructing passage through the hallway or stairwell.  

---
- No articles obstruct doorways including the inside stairwell and the fire escape.  

---
- Excessive amounts of flammable materials are not collected.  

---
- The fire extinguishers in the stairwell landing and in the corridor leading to the outside fire escape are fully charged.  

---

#### Offices

- No articles are obstructing doors or other passageways used for evacuation.  

---
- Excessive amounts of flammable materials are not present.  

---
- Electrical cords/receptacles are in good shape, not frayed or showing bare wires.  

---

Extension cords are properly sized and do not present a tripping hazard.

---

First aid kit is present and fully stocked.

---

Individual employee work spaces are free from fire and tripping hazards.

---

Up-to-date list of employees for your floor/department/area.

---

Floor Captain \_\_\_\_\_

Floor \_\_\_\_\_

Date Inspected \_\_\_\_\_

Appendix E

**Accident/Medical Emergency Report Form**

This report form is intended for use in recording an accident or medical emergency of an employee while performing on the job.

Date of Accident or Medical Emergency \_\_\_\_\_

Location of Accident or Medical Emergency \_\_\_\_\_

Description of Accident or Medical Emergency \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

List hazards that caused accident \_\_\_\_\_

Names of employees involved or witnesses \_\_\_\_\_

Action taken \_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Employee

Date \_\_\_\_\_

**COMPLETED FORM TO BE SUBMITTED TO SAFETY DIRECTOR**

Signature \_\_\_\_\_

Safety Director

Date Rec'd \_\_\_\_\_

Signature \_\_\_\_\_

Executive Vice Chancellor for Administration

Date Rec'd \_\_\_\_\_



Appendix F

**Hazardous Concern Report Form**

This report form is intended for use in recording hazards identified during inspection and for tracking and recording follow up actions.

Name \_\_\_\_\_ Date \_\_\_\_\_

Date safety hazard observed \_\_\_\_\_

Location of safety hazard \_\_\_\_\_

Description of safety hazard \_\_\_\_\_

\_\_\_\_\_

Recommended corrective action to be taken \_\_\_\_\_

\_\_\_\_\_

Corrective action taken to remove hazard \_\_\_\_\_

\_\_\_\_\_

Date corrective action completed \_\_\_\_\_

Hazards found during safety inspection \_\_\_\_\_

\_\_\_\_\_

Comments \_\_\_\_\_

\_\_\_\_\_

**COMPLETED FORM TO BE SUBMITTED TO SAFETY DIRECTOR**

Signature \_\_\_\_\_  
Safety Director

Date Rec'd \_\_\_\_\_

Signature \_\_\_\_\_  
Executive Vice Chancellor for Administration

Date Rec'd \_\_\_\_\_

Appendix G

**Evacuation Plan Maps**

MAP POSTED ON EACH FLOOR BY THE ELEVATOR

Appendix H

**Floor Captain's Employee Check-off List**

\_\_\_ Floor                      \_\_\_\_\_ Date

Names of Employees (including all temporary employees)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Total number of employees / visitors evacuated: \_\_\_\_\_

Total number of employees missing: \_\_\_\_\_

Report names of missing personnel to emergency personnel or to the Safety Director:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Emergency/Important Contact Telephone Numbers**

911 – Emergency/Police/Fire/Ambulance

**Building Personnel**

Martin Riggs, Building Owner	Cell Phone --	Office Telephone --
Todd Vance, Building Maintenance	Cell Phone --	
Gary Smith, Building Maintenance	Cell Phone --	
Doug Smith, Building Maintenance	Cell Phone --	

**West Virginia Higher Education Policy Commission Personnel**

Cindy Anderson, Safety Director / Director of Administrative Services  
Office Telephone -- (304) 558-4016                      Cell Phone --

MEMORANDUM

DATE:

TO:

FROM: CINDY L. ANDERSON

SUBJECT: BUILDING SECURITY SYSTEM

Enclosed for your personal use is a security card for the Boulevard Tower security system. Security cards are assigned based upon a numerical system. You are responsible for your card and care should be taken not to misplace the card. There will be a \$10.00 fee assessed by the building owner for any replacement cards.

The back doors of the building will be open at 6:30 a.m. each morning and locked at 6:00 p.m. each evening. The building will be locked at all times during the weekends and holidays. In addition to a key for the back door, a security card is required to gain entrance into the building through the second glass door. The security card is not needed to exit the building when the security system is activated (nights and weekends). There will be no access to the building through the front door (Kanawha Boulevard entrance).

In the event that the fire alarm is set off or power outages occur, the security system will be disengaged.

If you have any questions regarding the use of the security card, please contact me.

cla  
Enclosure

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### SMOKING GUIDELINES

#### **Purpose**

The purpose of these guidelines is to establish procedures to ensure that right to a healthful, smoke-free environment for each employee of the West Virginia Higher Education Policy Commission and the public as they transact business. Recent studies on the effects of passive smoke inhalation by non-smokers conclude that exposure to secondhand smoke can be harmful to one=s health. The work environment should present no unnecessary risk of physical harm or discomfort from environmental tobacco smoke. Furthermore, residents of State facilities, applicants, clients, and visitors should not be exposed to cigarette or any other environmental tobacco smoke. Therefore, there is a need to implement guidelines relating to smoking restrictions in all workplaces of the West Virginia Higher Education Policy Commission. In the application of these guidelines, anytime there is a conflict between the rights of smokers and non-smokers, the rights of non-smokers shall prevail.

#### **Definitions**

- A. Cigarette. Any lighted tobacco product.
- B. ETS. Environmental Tobacco Smoke: secondhand or side-stream smoke.
- C. Proper Ventilation. Smoke exhausted to the outside. The system used to expel the smoke shall not diminish the working conditions of the employees' environment: for example, the method may not affect the building=s heating and cooling system.
- D. Workplace/Worksite. Any office, facility, building, etc., which is operated by the State, including State owned/leased vehicles which are part of the West Virginia Higher Education Policy Commission.

#### **Guidelines**

- A. Smoking is prohibited in all offices, conference rooms, corridors, workrooms, storage areas, vehicles and restrooms of the West Virginia Higher Education Policy Commission.
- B. Signs will be posted in conference rooms, restrooms and on floors occupied solely by the West Virginia Higher Education Policy Commission staff indicating that smoking is prohibited.
- C. Employees who desire to smoke may do so during any authorized break period provided they do so in an area exterior to the Boulevard Towers Building.
- D. The administration will accommodate smokers, as is feasible, in the attendance of smoking cessation programs.

**Related Policies**

These guidelines do not supersede any local ordinances or State statutes that are more restrictive and applicable to the workplace, nor does it permit discrimination against smokers who apply for positions.

**Effective Date**

These guidelines are effective July 1, 1991, in order to provide smokers an opportunity to adjust to these guidelines. There will be no sanctions related to these guidelines until July 1, 1991.

**Sanctions**

Failure to comply with these guidelines will be handled in accordance with the disciplinary policy as contained in the “New Employee and Division Handbook”.

Effective: July 1, 1991  
Updated: May 19, 2004  
Updated: May 2, 2013

# Smoking Guidelines

**Boulevard Towers Building**  
1018 Kanawha Boulevard, East  
Charleston, West Virginia 25301

March 1, 2020

In accordance with the Kanawha-Charleston Health Department, the following guidelines regarding smoking are effective March 1, 2020:

1. Smoking and the use of electronic smoking devices must be at least 20 feet from building entrances or windows.
2. Smoking is prohibited in all offices, conference rooms, corridors, workrooms, storage areas, fire escapes, restrooms, or any other area inside the building.

A designated smoking area is located on the side of the Boulevard Towers building near the parking lot. Signs will be posted at this designated area. The remainder of the area is designated as non-smoking.

**THE SIDE DOOR IS TO REMAIN LOCKED AT ALL TIMES FOR SECURITY PURPOSES.  
DO NOT PROP OPEN THE DOOR WHILE YOU ARE OUTSIDE.**

Entrance to the building is available through the back and front doors of the building.

Thank you for your attention to this matter. If you have any questions, please contact Building Maintenance.

**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION  
COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
OF WEST VIRGINIA**

**TRAVEL POLICIES AND PROCEDURES**

Pursuant to Title 133, Procedural Rule, Higher Education Policy Commission, Series 29 Travel Section 1.1.5, each Governing Board shall promulgate travel rules, policies and procedures for managing travel at its institutions consistent with this rule, state and federal laws and the Internal Revenue Service regulations.

Contained herein are the Travel Policies and Procedures for the Higher Education Policy Commission (Commission) and the Council for Community and Technical College System of WV (Council) employees.

**Section 1. Delegation of Authority and Responsibilities**

- 1.1 Authority to manage, approve or disapprove travel and travel-related expenses is delegated to the Executive Vice-Chancellor for Administration of the Commission and Council. In turn, the Executive Vice-Chancellor may delegate this responsibility to each Vice-Chancellor under his purview.
- 1.2 The Vice-Chancellor may delegate others within their area for authorizing and approving travel and travel-related expenses.
- 1.3 Travel is authorized for official business only and only if the financial resources to reimburse the traveler are available.
- 1.4 The responsibility to review a traveler's expense account settlement lies with each Vice-Chancellor or their delegated representative. Approval of a traveler's expense account settlement by the Vice-Chancellor/representative means that the expense account settlement meets all criteria established by this policy for reimbursement. Review and submission of travel should occur within 14 days after completion of the travel.
- 1.5 All Out of State Travel Authorizations must be approved by the Executive Vice-Chancellor, the Chancellor for the Commission or the Chancellor for the Council.

**Section 2. Travel Regulations Applicable to All Employees of the Commission and Council**

- 2.1 Approval of travel shall be secured in advance by the employee in accordance with these regulations where applicable. If an employee is traveling out of state, a



Commission/Council Travel Authorization Form (see Section 9) signed by the Executive Vice-Chancellor or his representative is required. An employee should not travel without proper approval of the appropriate Vice-Chancellor/representative.

- 2.2. Employees are responsible for submitting a Travel Expense Account Settlement Form (see Section 9) with all required attachments to the traveler's Vice-Chancellor/representative. The form should be submitted for reimbursement by the traveler 14 days after the last day of the approved travel to qualify for reimbursement of expenses.
- 2.3. Consultants, contractors and non-employees are required to follow these policies and procedures for reimbursement of travel expenses.
- 2.4. Reimbursement of travel expenses paid from federal, state and private grants shall be governed by the terms and conditions of the grant if they differ from those contained in this policy; otherwise, this policy shall govern such reimbursement.

### **Section 3. Transportation**

#### 3.1 Air Transportation

- 3.1.1 Airline tickets should be purchased using the Purchasing Card (P-card).
- 3.1.2 The preferred provider of airline tickets is the state's current provider. Traveler should make advance bookings through the state's current provider to secure the least expensive airfare possible. Reimbursement may be made in advance up to 180 days prior to the trip if an employee is required to use personal funds, rather than the P-card, to book air travel.
- 3.1.3 For airfare reimbursement, an original invoice from the travel service must be provided. If airfare is obtained in advance, it must be referenced on the expense settlement form and a copy of the paid airfare attached. Refundable or unused airline tickets shall be returned immediately to the ticket issuer for a proper credit or refund.
- 3.1.4 If an increase in the cost of airfare is incurred, the charge is reimbursable if the traveler is directed by the Executive Vice-Chancellor/representative to change the travel plans or if extenuating circumstances arise. Increased or extra charges incurred due to the traveler's negligence will be considered a personal expense of the traveler and shall not be reimbursed.
- 3.1.5 Deliberately causing increased costs or delays to obtain personal gratuities such as denied boarding compensation, frequent flier points or similar benefits is prohibited. In addition, conversion of airline tickets for personal benefit such as

downgrading tickets, returning unused tickets for cash, credit or personal airline tickets, or any similar action is prohibited. Any credits, rebates or refunds resulting from these actions must be returned to the Commission or Council.

- 3.1.6 All major airlines charge a fee to issue paper flight coupons in situations where an e-ticket is available. E-tickets are the industry standard and are sufficient for traveling and reimbursement. If a paper ticket is requested, the service charge will not be reimbursed. In the case of a traveler experiencing problems with e-tickets when exchanging due to flight cancellations or delays, particularly when changing airlines, the travel service vendor is required to assist and provide proper documentation.

## 3.2 Ground Transportation

- 3.2.1 The traveler may use a Commission-owned vehicle, commercial rental vehicle or a privately owned vehicle for ground transportation. The preferred method of ground transportation is to use of one of the Commission's vehicles. If a Commission vehicle is not available, the second preferred method of ground transportation is commercial rental vehicle.
- 3.2.2 Any traveler who uses ground transportation must possess a valid operator's license. The traveler is personally responsible for any fines or penalties resulting from citations, charges or warrants attributable to operator negligence. Such fines or penalties shall not be reimbursed.
- 3.2.3 When flying is the recommended travel method, and the traveler chooses to drive rather than fly, reimbursement will be based on actual in-transit expenses (mileage, hotels, parking, meals, etc.) not to exceed the lowest available commercial airfare plus local transportation to and from the airport and parking.
- 3.2.4 When courtesy transportation is provided by a hotel, motel or other service facility, the traveler is encouraged to use such service.
- 3.2.5 Travelers may be reimbursed for taxi (Uber, Lyft, etc.), bus and other forms of public transportation. Receipts should be provided. If a P-card is used for payment a receipt is required.
- 3.2.6 A commercial vehicle rental should be used when a Commission vehicle is unavailable and the cost will be less than the reimbursement associated with a privately owned vehicle. Only Commission or Council employees are permitted to operate the vehicle. All vehicles should be rented from the State Division of Purchasing's current statewide contract.

- 3.2.7 Vehicle rentals should be paid with the P-card. Rentals are to be mid-size, standard or small depending on the needs of the employee. If 3 or more employees are traveling together, a larger vehicle may be rented.
- 3.2.8 If travel is in excess of three (3) days, the weekly rental rate should be compared to the cost of the daily rate. The lowest cost option should be used.
- 3.2.9 The P-card provides Collision Damage Insurance (CDW) at no cost for rentals up to 31 days. CDW costs will not be reimbursed for covered P-card rentals. However, the P-card does not cover the rental of trucks, vans that seat more than 8 (eight) people, off –road vehicles, motorcycles and other various specialty vehicles. CDW should be obtained for vehicles not covered by the P-card.
- 3.7.10 For a vehicle rental not paid for by P-card, CDW is reimbursable for all rentals of a duration of seven (7) or fewer days. CDW for rentals greater than seven (7) days will not be reimbursed and should not be taken. Insurance for rentals in excess of seven (7) days is covered under the Commission’s or Council’s insurance policy.
- 3.2.11 CDW is a reimbursable expense for any approved rental vehicle used outside the United States.
- 3.2.12 Travelers should return rental cars with the fuel tank at the same level as was initially in the rental vehicle. Refueling costs charged by rental car vendors are not reimbursable except for extraordinary circumstances where the traveler could not refuel the car prior to return. Such instances must be presented for approval to the Executive Vice-Chancellor/representative upon receipt of appropriate justification.
- 3.2.13 Privately owned vehicles may be used for state travel with the Commission’s or Council’s approval, when a Commission owned vehicle is not available. Reimbursement will be made at the prevailing rate per mile, as established by GSA, for the shortest practicable route to the point of arrival. This reimbursement rate is intended to cover all operating costs of the vehicle including fuel, maintenance, depreciation, insurance, etc., and no additional reimbursement will be made. Receipts are not required for mileage reimbursement when using privately owned vehicles.

#### **Section 4. Lodging**

- 4.1 Allowable reimbursement for lodging shall include the actual expenses for overnight accommodations and all applicable taxes and surcharges.
- 4.2 Travelers should secure the lowest rate available at a reasonably priced facility. Certain hotels and motels offer special reduced rates to government employees and should be

requested at the time of the reservation. Sales tax may be paid by the traveler unless the lodging facility is located in the state of West Virginia and billed to the P-card. In certain instances, if the traveler is paying directly for the lodging, the hotel may exempt the employee from paying the tax upon presentation of a tax exempt form. The traveler should inquire if the hotel will accept a tax-exempt form when the reservation is made.

- 4.3 The location of the lodging facility should be as convenient as possible to the place where business is being transacted.
- 4.4 In the case of multiple occupancy, reimbursement may be claimed fully by one traveler with no claim filed by the other traveler, or each traveler may be reimbursed at equal percentages of the total actual cost for the accommodations.
- 4.5 Booking hotels through third-party vendors such as Hotels.com, Travelocity and Expedia will not be reimbursed based on the current travel audit procedures put in place by the State Auditor's Office. Third-party vendors are unable to provide an invoice or folio for reimbursement and charge fees that are not reimbursable. The traveler is encouraged to book through <https://www.fedrooms.com/> for the best rates for government employees.
- 4.6 Receipts are required for all lodging. An invoice or folio shall be the official document utilized for reimbursement to the traveler.

## **Section 5. Meals**

- 5.1 Meal expense reimbursement is based on the travel location and is not to exceed the maximum Per Diem established by the federal government (GSA). Per Diem rates are available at: <http://www.gsa.gov/portal/content/104877> . There is also an App available for download to smart phones for your convenience: <http://www.gsa.gov/portal/content/302273> .
- 5.2 Meal reimbursement is allowed when lodging is listed as “gratis” or “no charge”. Alcohol and entertainment expenses are specifically excluded.
- 5.3 Employees will be reimbursed the cost of meals up to the GSA Per Diem when there is an overnight stay. If reimbursement is requested in excess of the federal rate, receipts are required and the Executive Vice-Chancellor/representative must approve the expense voucher.
- 5.4 When meals are provided for a traveler, the traveler's maximum daily rate shall be reduced by the appropriate amount as identified on the GSA website (see Section 5.1).
- 5.5 Meal and incidental rates differ by travel location. These are identified on the GSA website: <http://www.gsa.gov/portal/content/104877> . Incidental rates include tips given to porters, baggage carriers, bellhops, hotel maids, steward or stewardesses and other

applicable individuals. If the traveler requests a higher-than-standard incidental rate, the request must be approved by the Executive Vice-Chancellor/representative.

- 5.6 On the first and last days of travel of an overnight trip when no meals are provided, the allowable reimbursement is based on 75% of the GSA Per Diem rate for the specific city.
- 5.7 If a meal(s) is provided gratis or included within a registration fee of the business travel, the Per Diem rate must be reduced by the appropriate amount.
- 5.8 Single day travel is not eligible for meal reimbursement except in the case of a traveler being away longer than 12 hours. For a traveler who is away in excess of 12 hours, 75% of the prescribed federal Per Diem is allowable.

### **Section 6. Registration Fees**

- 6.1 Fees or charges for attendance at conferences, meetings, seminars or workshops as well as event-related materials are reimbursable. Reimbursement for registration fees at meetings or conference is allowable and must be supported by a receipt. Employees should verify acceptable payment methods with the conference prior to attending. Registration fees should be charged to the P-card when possible. Travelers are to adjust meal reimbursement requests for meals included with the registration fee. A copy of the schedule of events for the meeting, conference, seminar or workshop should be provided with the travel reimbursement request.
- 6.2 If a traveler is directed by the Commission or Council to change their travel plans, or if other extenuating circumstances arise, cancellation charges made by the event sponsor will be reimbursed. Charges incurred due to the failure of the traveler to notify the event sponsor of a change will be considered a personal expense.

### **Section 7. Other Expenses**

- 7.1 Travelers may incur miscellaneous business-related expenses for which reimbursement may be made, if appropriate. Original receipts are required for expenses over \$75.00. Receipts for items under \$75.00 are suggested to be provided if readily available. Receipts are required for any P-card charge, regardless of the dollar amount. If an original receipt is lost, a faxed or copied original may be submitted but must be certified by the traveler and the Executive Vice-Chancellor/representative.

Such expenses and reimbursements may include, but are not limited to:

- a. Baggage storage fees between appointments and/or between hotels and meeting places.
- b. Tolls, garage and parking fees.

- c. Communication expenses such as local calls that include a surcharge; long distance business calls which may include toll charges; facsimile charges and charges related to internet connections.
  - d. Currency conversion costs.
  - e. Guides, interpreters and visa fees.
  - f. Laundry and dry cleaning when an employee is in travel status in excess of seven consecutive days without returning home.
- 7.2 Non-reimbursable travel-related expenses include the cost of passports (not as a travel expense but may be considered as a direct charge to the Commission or Council) and personal flight or baggage insurance.
- 7.3 Employees traveling in foreign countries should report their expenditures in US dollars. The total expenditure in foreign currency must be converted into US dollars using the rate/rates at which the foreign money was obtained. The rates of conversion and the commissions must be shown.

### **Section 8. Reimbursement Forms**

- 8.1 Travelers must use the travel forms attached to these Policies and Procedures for travel related activities.

### **Section 9. Other Provisions**

- 9.1 In accordance with WV Code § 6B-2-5(2), employees may use bonus points acquired through frequent traveler programs while traveling on official government business, as long as the employee's participation in the program does not result in an additional cost to the state.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

**CLASSIFIED STAFF COUNCIL  
TUITION FEE WAIVER GUIDELINES**

The West Virginia Higher Education Policy Commission (Commission) encourages career development and self-improvement. Tuition waivers may be granted to employees based on eligibility under these guidelines and availability of waivers.

**Definitions**

A. Eligible Employee

1. Only full-time regular employees are eligible for tuition waivers for classes related to purposes of pursuing an undergraduate degree.
2. An employee shall be employed in her/his current position for at least six calendar months prior to the deadline for applications of the semester in which a waiver is being requested.
3. An employee may not be in an adjustment, improvement or probationary period at the time a waiver is being requested.

B. Eligible Course Work

1. Classes requested should be related to a degree, certification or other well defined program.
2. The classes should be related to the employee's current position or upward mobility in the Commission office.

**Application Process**

The Classified Staff Council Chairperson will distribute notices including application forms and information for tuition fee waivers to employees at least twice a year via interdepartmental mail or through electronic mail messaging.

Deadline for Applications:

By July 1	Fall Semester
By November 1	Spring Semester
By May 1	Summer Sessions (if waivers are available)

## Tuition Fee Waiver Approval Process

- A. The designated tuition fee waiver for employees will be available for the fall and spring semesters. Requests for waivers for summer classes will be considered provided that the full complement of hours has not been utilized during the spring semester. Employees will initially be restricted to a maximum of one three-hour course per semester. Approval for additional hours per semester will only be considered on an available basis. Consideration will be given to employees requesting additional hours who are at or near graduation or receipt of certification.
  
- B. Final review and approval of all applications shall be the responsibility of the Classified Staff Council based on the following point system:
  - I. Reason for Enrollment:
    - A. Degree or work related 4 points
    - B. General interest 2 points
  
  - II. Seniority:
    - A. Based on the most recent continuous service with the Commission office.
      - 1. Six months to one year of service 1 point
      - 2. Over one year to five years of service 2 points
      - 3. Over five years to ten years of service 3 points
      - 4. Over ten years of service 4 points
  
  - III. Classification:
    - A. New applicant – an employee who has never been selected as a tuition waiver recipient. 2 points
    - B. Renewal applicant – an employee who has received a tuition waiver. 4 points

The recipient is responsible for all other fees and charges in excess of the tuition waiver.

## Declining of Tuition Waiver

Employees who for one reason or another cannot utilize their waiver, during the allowable add/drop time period will be expected to notify the Classified Staff Council in writing so that their waiver may be given to another potential recipient. Employees who have previously declined waivers and who reapply will be considered on a case-by-case basis.



## **Notification of Tuition Fee Waiver Recipient**

It is the responsibility of the Classified Staff Council Chairperson to notify the Financial Aid Director at the institution where the tuition fee waiver has been granted who is eligible for the tuition fee waiver for the given semester by giving the person's name, address, social security number and hours awarded.

March 23, 1999

Updated: March 23, 2005

Updated: June 2013

**WV Higher Education Policy Commission**  
**1018 Kanawha Boulevard, East**  
**Charleston, WV 25301**

**REVIEWED BY: Classified Staff Council**  
 Date: \_\_\_\_\_  
 Total Credit Hours Earned: \_\_\_\_\_  
 Total Earned Towards Major: \_\_\_\_\_

<b>Application Tuition and Fee Waiver</b>	
Name: _____	Address: _____
SS#: _____	
	Office Phone: _____
Current Classification: _____	
Division: _____	
Number of Continuous Years _____ Months _____ with West Virginia Higher Education Policy Commission	
Date of Employment with WVHEPC: _____	
Have You Ever Received a Tuition Waiver? (Yes or No) _____	
If So, How Many? _____ When Was Most Recent Waiver? _____	
Proposed Course of Study ?	Course No. _____ Course Name _____ Hours _____
	Course No. _____ Course Name _____ Hours _____
Towards a Degree ? (Yes or No) _____	
Relevant to Your Position ? (Yes or No) _____	
If Relevant, Explain _____	
Major _____	
This application is made in full compliance with the guidelines set forth by the Classified Staff Council for employees of the West Virginia Higher Education Policy Commission. I agree to all guidelines as set forth for the designated tuition and fee waiver.	
Signed: _____ Date: _____	
Supervisor	
This application has been reviewed by me and I fully support this employee's application for a WVHEPC tuition and fee waiver and his/her ambition to further his/her knowledge and course of study.	
Signed: _____ Date: _____	
Title: _____ Division: _____	
<b>Return Completed Application to Your Staff Council Representative</b>	

March 2005 Updated: June 2013



**West Virginia Higher Education Policy Commission  
West Virginia Community and Technical College System**



**Confidentiality and Non-Disclosure Agreement**

The intent of this document is to inform individuals granted access to the data and information collected and maintained by the West Virginia Higher Education Policy Commission (Commission) and the Community and Technical College System (Council) of their responsibilities and obligations related to the protection and proper utilization of the data. Individuals granted access to data have the responsibility to protect the privacy, security, confidentiality, and integrity of the data as part of the conditions of being granted and maintaining access if applicable.

All employees (paid and unpaid, full-time or part-time, interns, technical and non-technical) of the Commission and Council by nature of their positions may have access to confidential and/or personally identifiable information (PII) including student educational records, financial information, employee specific information, information from other state agencies, grant related information, or other protected information. All employees have the responsibility to 1) protect this data from unauthorized access, modification, disclosure, transmission, or destruction; 2) maintain the confidentiality of any such private personal information that is encountered; and 3) ensure that all privacy practices are followed at all times.

While much of the data collected and maintained is available to the public, some is considered sensitive, confidential individual-level, and/or PII and have restrictions due to federal or state regulations and laws. Confidential individual-level and/or PII includes all information protected by federal or state laws including, but not limited to the Family Educational Rights and Privacy Act (FERPA), the Higher Education Act of 1965 (HEA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Gramm-Leach-Bliley Act (GLB).

PII includes any information that by itself or in combination with other information, has the potential to directly determine or find the identity of an individual person and could be harmful to an individual if disclosed. Examples of this include but are not limited to social security number, date of birth, first and last name, race/ethnicity, GPA, grades, financial information, and FAFSA information.

Access to data and information is at the sole discretion of the Commission and Council and may be monitored, audited, modified, suspended, or terminated at any time.

## Confidentiality and Non-Disclosure Statement

This confidentiality and non-disclosure statement shall survive after the conclusion of employment or relationship with the Commission and Council. Any individual found to have violated this policy may be subject to disciplinary or corrective actions based upon the policies, rules, and procedures of Commission and Council. These actions may include sanctions including, but not limited to, revocation of privileges up to and including termination of employment. Certain violations, misuse, or improper disclosures of confidential information may include civil and/or criminal sanctions.

- I fully understand that I must protect my password at all times. I recognize that the disclosure of or sharing of passwords is prohibited and that I am accountable for them and for any improper access of data and information gained with these privileges.
- I acknowledge and understand the confidential nature of the data in which I have or will have access to and the safeguards with which I must comply in my handling of such data.
- I understand that some of the data and information in which I have or will have access to have restrictions due to federal or state regulations and laws such as FERPA, HEA, HIPAA, or GLB and must be protected in accordance with these laws and regulations.
- I agree to adhere to all applicable state, federal, or Commission and Council privacy and security laws, rules, policies, and procedures.
- I agree to complete all required security and privacy training assigned to me.
- I will not access or attempt to gain access to confidential information in which I do not require access to in order to fulfill my official position responsibilities.
- I will not discuss or disclose any data, records or information that I am not authorized to discuss or disclose. Furthermore, if authorized to share data, I will only use authorized methods of sharing.
- I will exercise care to protect information against accidental or unauthorized access, modifications, disclosures, or destruction.
- When discussing data, records or information with other employees in the course of performing my official responsibilities, I will exercise care to keep the conversation private and not overheard by others who are not authorized to have access to such Information.

By signing this document I certify that I am aware of the restrictions imposed on protected data and information as well as my responsibilities under this confidentiality and non-disclosure agreement. Furthermore, I agree to abide by all the provisions of this confidentiality and non-disclosure agreement.

Employee Name: \_\_\_\_\_ Division: \_\_\_\_\_

Title: \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date: \_\_\_\_\_

# WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE SYSTEM

## PRIVACY POLICY

### Introduction

Thank you for visiting the website of the West Virginia Community and Technical College System (Council). The Council is committed to preserving your privacy throughout your visit to the website. This privacy statement addresses the collection, security, and disclosure of information that may be obtained through the Council's website ([www.wvctcs.org](http://www.wvctcs.org)).

By continuing to utilize the Council website or by voluntarily submitting personal information to us, you are agreeing to the terms of this privacy policy and acknowledge that your information will be handled in accordance with this policy.

### Collection of Information

Visitors are important to us, therefore, we do not capture personal information about them without their permission or knowledge.

We may automatically collect the following information about your visit:

- The date and time of your visit;
- The type and version of the browser and operating system used for the visit;
- The name of your domain; (for example "yourdomain.net") or the unique internet protocol (IP) address used to access our site;
- The HTTP request URL which identifies the web page or file requested by the visitor;
- The links that visitors click to go to other websites;
- The pages you visit within the Council's website during your visit; and
- The number of times pages or publications are viewed in a visit.

The Council may also use "cookies" and other internet technologies to manage the website. Cookies are small text files that a web server may ask your browser to store and then send back to the web server when needed.

### Personally Identifiable Information

During your visit, you may voluntarily provide personally identifiable information in email communications, forms, or other visitor submitted documents located on the website. Personally identifiable information is information about a person that can be used to identify that specific individual.

Examples of personally identifiable information that may be collected through these voluntary processes includes the following:

- Name and date of birth date;
- Address, phone number, email address;
- Cell phone number for text messaging opt-in services;
- Information you voluntarily submit through various forms. For example, the student complaint process or request for representation forms; and
- Other volunteered information, such as vendor profile/contact information, survey information or the attachments and content of e-mails.

### **Use of Information Collected**

The purpose in collecting non-personally identifiable information is to better understand how visitors are using the Council 's website and to help us improve the content and performance of the webpage.

The Council uses the personally identifiable information for purposes that relate to the reason you provided the information or as required by law. We may also use the information for other reasonably anticipated purposes, based on the circumstances. If information is used for another purpose, we will obtain your permission.

### **Protection of Personally Identifiable Information**

As a general rule, the Council will only disclose personally identifiable information under certain circumstances and to certain individuals or entities as listed below:

- To those who need to know that information in order to process it on our behalf or to provide services available on our website and have agreed not to disclose it to others;
- In cases where the information is considered public information under the West Virginia Freedom of Information Act, West Virginia Code §29B-1-1 et seq.; and
- To law enforcement, the federal government, or in response to a court order or subpoena if no other law protects your information.

Online visitors must understand the information collected by the website may be subject to inspection, if such information is a public record or not otherwise protected from disclosure.

### **Aggregated Statistics**

We may collect statistics about the behavior of visitors to the website. We may display this information publicly or provide it to others. However, we do not disclose personally identifiable information other than as described above.

### **Information Disclaimer**

This website provides general information about the West Virginia Higher Education Policy Council, its programs and services. The Council strives for the highest standards in content accuracy on this site. We designed this website to make it easier and more efficient for all users to

interact with the Council and we welcome your comments and suggestions and will seek to correct any errors.

### **Link Disclaimer**

The Council 's website has provided links to a number of related websites in an effort to provide ample resources to visitors. The Council cannot accept responsibility for the accuracy or content of those pages or guarantee full access to those pages, nor should the Council be considered as endorsing any of the outside sites linked from the main site.

These sites may have their own privacy statements posted which would take precedence over this policy. Visitors should read the privacy policies of individual sites and always be cautious about providing personally identifiable information without a clear understanding of how that information will be used.

### **Accessibility Statement**

Every effort has been made to ensure the pages on this website are accessible to individuals with disabilities in accordance with Section 508 of the Rehabilitation Act. The website allows for increasing text size and allows voice readers to interpret content. If you or someone you know is not able to access any content on this website due to a disability, please let us know by emailing [chancellor@wvhepc.edu](mailto:chancellor@wvhepc.edu).

### **Privacy Policy Changes**

Although most changes are likely to be minor, we may change our privacy policy from time to time, and in our sole discretion. We encourage visitors to frequently check this page for any changes to our privacy policy. Your continued use of this site after any change in this privacy policy will constitute your acceptance of such change.

### **Contact**

If you have questions about the Privacy Policy of the West Virginia Higher Education Policy Council, please contact the Privacy Officer for the West Virginia Higher Education Policy Council.

Pamela Woods  
Privacy Officer  
Phone: 304-558-1112, Ext. 210  
Email: [pamela.woods@wvhepc.edu](mailto:pamela.woods@wvhepc.edu)

For more information on privacy in West Virginia, please visit [West Virginia State Privacy Office](#).

Adopted: July 1, 2019



## West Virginia Higher Education Policy Commission West Virginia Community and Technical College System



### Data Classification and Protection Policy

#### 1. Purpose

This purpose of this policy is to establish a framework for classifying and protecting the data collected and maintained by the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Community and Technical College System (Council).

This policy is based on the State of West Virginia Office of Technology's Data Classification Policy ([WVOT-PO1006](#)), industry standards, best practices recommended by the U.S. Department of Education's Student Privacy Policy Office (SPPO), and adheres to state and federal privacy laws and regulations<sup>1</sup>. This policy is reviewed annually or as circumstances dictate and revised as applicable.

#### 2. Scope

This policy applies to all employees (paid, unpaid, interns, full-time, part-time, technical, and non-technical), vendors, contractors, and all other individuals, collectively referred to as "users", who have access to or use of the data collected and maintained by the Commission and Council. Furthermore, this policy applies to all data collected, maintained, or processed by the Commission and the Council broadly.

#### 3. Authority

The Executive Vice Chancellor of Administration for Commission and Council has appointed a Privacy Officer and named them as the designated authority to establish and maintain a system of data and information security and protection. The Privacy Officer and the Division of Policy and Planning determine the classification of all data and information.

#### 4. Data Classification

All data requires classification to ensure proper handling and protection and all data must be managed according to its classification. Commission and Council data are classified into different levels and each level requires specific security and protection due to the risk impact of the data is mishandled.

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<sup>1</sup> State and Federal privacy laws and regulations include but are not limited to the following: *W.V. Code §46A-2A et seq.*, [Family Educational Rights and Privacy Act \(FERPA\)](#), the [Higher Education Act of 1965 as revised in 2008 \(HEA\)](#), the [Gramm-Leach-Bliley Act \(GLBA\)](#), and the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#)



## Level 1 – Restricted

- 4.1 **Restricted** data is the most sensitive to integrity and confidentiality risks. Data is classified as **Restricted** when unauthorized disclosure could cause a significant level of risk.
- 4.2 Access to **Restricted** data is protected by federal, state, and local privacy laws and regulations such as FERPA, HEA, and GLBA. Only authorized users who require access to perform their duties will be given access. **Restricted** data must be protected at the highest level possible.
- 4.3 Unauthorized access has the potential to cause harm to the individual, may violate state or federal privacy regulations, or cause data breaches.

Examples of **Restricted** data may include the following:

- Personally Identifiable Information (PII), which includes any information that by itself or in combination with other information, has the potential to directly determine or find the identity of an individual person and could be harmful to an individual if disclosed;<sup>2</sup>
  - Social security number, state/federal issued personal identification number, or driver’s license number;
  - Banking or credit card numbers;
  - Financial information including state and federal tax information;
  - Full name and personal address;
  - Name of student’s parent and other family members, or mother’s maiden name;
  - Citizenship or immigration status;
  - Health and medical information;
  - Student grades, GPA, ACT or SAT scores;
  - FAFSA or financial aid information;
- Indirect PII is information, when linked or linkable could be used to identify an individual
  - Date or place of birth;
  - Business phone;
  - Race/ethnicity;
- Protected draft communications;
- Computer vulnerability reports;
- Foster care data;
- Health, mental health, and medical data;

## Level 2 – Sensitive

- 4.5 **Sensitive** data is defined as data that if disclosed could result in a moderate level of risk. This includes data that is made available through open record requests or other formal or legal processes.

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<sup>2</sup> See Family Educational Rights and Privacy Act (FERPA) regulations, [34 CFR §99.3](#), for a complete definition of PII specific to education data and for examples of education data elements that can be considered PII.

- 4.6 Direct access is limited to authenticated and authorized individuals who require access to perform their duties.
- 4.7 Examples of **Sensitive** data may include:
- Most data elements in state personnel records;
  - State/federal contracts data;
  - Employment and training program data;

### **Level 3 – Public**

- 4.8 **Public** data is characterized as being open to the public. Information that alone or in combination with other data cannot be used by a reasonable person to identify an individual; furthermore, if disclosed or shared, it would result in little or no risk to the individual or agency.
- 4.9 This type of information is actively made public, published and distributed without restriction, or available in the form of physical documents, formal statements, press releases, interactive data dashboards, or other ways where the public can access it.
- 4.10 The greatest threat to **Public** data is from alteration or distortion.
- 4.11 Examples of **Public** data may include the following:
- Directory information which includes information that is not generally considered to be harmful to an individual, or an invasion of privacy;
  - Enrollment in an institution;
  - Official honors and awards received;
  - Participation in officially recognized sports;
  - Agency public websites;
  - Commission and Council policies and procedures;

## **5. Cloud Services**

To utilize a cloud computing service to receive, transmit, store, or process Commission and Council data the following must be ensured.

- 5.1 A privacy impact assessment must be completed by the Privacy Officer.
- 5.2 The service must first be vetted by the agency Privacy Officer and/or the Division of Policy and Planning. No data can be transferred, processed, or stored on a cloud service until proper authorization has been given.
- 5.3 Data must reside in the United States and be isolated so that other cloud customers sharing physical or virtual space cannot access other customer data or applications.
- 5.4 Data must be encrypted during transit. All mechanisms used to encrypt the data must be FIPS 140-2 compliant and operate utilizing the FIPS 140-2 compliant module.
- 5.5 Data must be encrypted at rest while in the cloud.

- 5.6 Devices accessing the cloud storage can be securely sanitized and/or destroyed at the end of their life cycle or if the device is lost or stolen.
- 5.7 The cloud service must be compliant with all required state and federal privacy regulations including FERPA, HEA, HIPAA, and GLBA. Other regulations may apply depending on the data that will be involved.
- 5.8 Proper documentation, contracts, and agreements must be developed and reviewed by the Privacy Officer to ensure compliance with state and federal laws.
- 5.9 Cloud security must be reviewed for compliance annually.

## 6. Training and Awareness

All users must be aware and knowledgeable in the Commission and Council's data classification policy.

- 6.1 All users will be trained and made aware of the data classification levels annually or when changes arise.

## 7. Data Criticality

Data and systems are put into appropriate classification levels according to their criticality. The levels of criticality and their descriptions are as follows:

- 7.1 **Level A: Extremely Critical** – These data and systems are critical to operations and must be protected by a vital plan allowing the continuation of operations within a very short timeframe. These data and systems also require restoration of the original facilities to be able to resume business and might require availability within two hours.
- 7.2 **Level B: Critical** – These data and systems are required in order to administer functions within the Commission and Council that need to be performed. Continuity planning allows the Commission and Council to continue operations in these areas within a certain period of time until the data and systems can be restored and might require availability within eight hours.
- 7.3 **Level C: Not Critical** – These data and systems are necessary to the Commission and Council, but short-term interruption or unavailability is acceptable.

## 8. General Safeguarding Policies

It is important to ensure that **Restricted** and **Sensitive** data is always protected. A privacy incident<sup>3</sup> is defined as an attempted or successful effort to access, acquire, disclose, or use PII or other information without authorization (i.e., any potential or actual unauthorized disclosure). That information may be in various formats, including physical or electronic records, verbal statements, or other reports. These types of incidents can normally be prevented by following

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<sup>3</sup> See Commission and Council Incident Response Plan for details on privacy incidents.

privacy procedures and using appropriate controls when sharing or accessing restricted or sensitive information.

There may be times where sharing **Restricted** or **Sensitive** information is necessary. In these instances, you should contact the Privacy Officer or the Division of Policy and Planning who will assist you in determining the most secure method and processes to follow. Policy and Planning has developed several methods that can be used for the secure transfer of **Restricted** or **Sensitive** information.

### **General Restricted or Sensitive Information Storage and Sharing Rules:**

- 8.1 Never email **Restricted** or **Sensitive** information.
- 8.2 **Restricted** and **Sensitive** information is to be stored on the secure file folders assigned to each user by the Senior IT Systems Administrator.
- 8.3 **Restricted** or **Sensitive** information is **never** to be stored on local machines, smart phones, tablets, laptops, USB or flash drives, external hard drives, digital media, or other portable devices without express prior authorization from the Privacy Officer or Division of Policy and Planning and proper encryption is used.
- 8.4 **Restricted** or **Sensitive** information is **never** to be stored on cloud services without prior authorization from the Privacy Officer or Division of Policy and Planning and proper encryption is used.
  - 8.4.1 Examples of cloud storage and services that **are not approved**, and must be approved beforehand include, but not limited to:
    - Dropbox
    - Microsoft One Drive (including One Drive for business)
    - Google Drive
    - Google Docs
    - File Den
- 8.5 The use of personal storage, equipment, or personal storage for **Restricted** or **Sensitive** information is **strictly prohibited**. Any exception to this must have prior authorization from the Privacy Officer or Division of Policy and Planning, approved virus protection, and proper encryption.
- 8.6 Never share **Restricted** or **Sensitive** information without the proper authority, data sharing agreements, or memorandum of understanding documents in place.

### **9. Policy Specific Definitions**

- 9.1 Criticality – Being of the highest importance. The level at which data must be protected from non-recovery.
- 9.2 Restricted Data – Information that is legally protected (ex: Student educational records) or otherwise deemed by a qualified expert to be unsuitable for open access.
- 9.3 Sensitivity - The level at which data must be protected from disclosure.

- 9.4 System – A combination of hardware, software, and procedures necessary to support data. A server may have multiple systems and a system may require multiple servers.

## **10. Enforcement and Authority**

Enforcement of this policy is the responsibility of the Executive Vice Chancellor of Administration for the Commission and Council or his/her designee.

Any user found to have violated this policy may be subject to disciplinary or corrective actions based upon the policies, rules, and procedures of Commission and Council. These actions may include sanctions including, but not limited to, revocation of privileges up to and including termination of employment. Certain violations, misuse, or disclosures of confidential information may include civil and/or criminal penalties.

## **11. Change Log History**

June 2019: New document;

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### PRIVACY POLICY

#### **Introduction**

Thank you for visiting the website of the West Virginia Higher Education Policy Commission (Commission). The Commission is committed to preserving your privacy throughout your visit to the website. This privacy statement addresses the collection, security, and disclosure of information that may be obtained through the Commission's website ([www.wvhepc.edu](http://www.wvhepc.edu)).

By continuing to utilize the Commission website or by voluntarily submitting personal information to us, you are agreeing to the terms of this privacy policy and acknowledge that your information will be handled in accordance with this policy.

#### **Collection of Information**

Visitors are important to us, therefore, we do not capture personal information about them without their permission or knowledge.

We may automatically collect the following information about your visit:

- The date and time of your visit;
- The type and version of the browser and operating system used for the visit;
- The name of your domain; (for example "yourdomain.net") or the unique internet protocol (IP) address used to access our site;
- The HTTP request URL which identifies the web page or file requested by the visitor;
- The links that visitors click to go to other websites;
- The pages you visit within the Commission's website during your visit; and
- The number of times pages or publications are viewed in a visit.

The Commission may also use "cookies" and other internet technologies to manage the website. Cookies are small text files that a web server may ask your browser to store and then send back to the web server when needed.

#### **Personally Identifiable Information**

During your visit, you may voluntarily provide personally identifiable information in email communications, forms, or other visitor submitted documents located on the website. Personally identifiable information is information about a person that can be used to identify that specific individual.

Examples of personally identifiable information that may be collected through these voluntary processes includes the following:

- Name and date of birth date;
- Address, phone number, email address;
- Cell phone number for text messaging opt-in services;
- Information you voluntarily submit through various forms. For example, the student complaint process or request for representation forms; and
- Other volunteered information, such as vendor profile/contact information, survey information or the attachments and content of e-mails.

### **Use of Information Collected**

The purpose in collecting non-personally identifiable information is to better understand how visitors are using the Commission's website and to help us improve the content and performance of the webpage.

The Commission uses the personally identifiable information for purposes that relate to the reason you provided the information or as required by law. We may also use the information for other reasonably anticipated purposes, based on the circumstances. If information is used for another purpose, we will obtain your permission.

### **Protection of Personally Identifiable Information**

As a general rule, the Commission will only disclose personally identifiable information under certain circumstances and to certain individuals or entities as listed below:

- To those who need to know that information in order to process it on our behalf or to provide services available on our website and have agreed not to disclose it to others;
- In cases where the information is considered public information under the West Virginia Freedom of Information Act, West Virginia Code §29B-1-1 et seq.; and
- To law enforcement, the federal government, or in response to a court order or subpoena if no other law protects your information.

Online visitors must understand the information collected by the website may be subject to inspection, if such information is a public record or not otherwise protected from disclosure.

### **Aggregated Statistics**

We may collect statistics about the behavior of visitors to the website. We may display this information publicly or provide it to others. However, we do not disclose personally identifiable information other than as described above.

### **Information Disclaimer**

This website provides general information about the West Virginia Higher Education Policy Commission, its programs and services. The Commission strives for the highest standards in content accuracy on this site. We designed this website to make it easier and more efficient for all

users to interact with the Commission and we welcome your comments and suggestions and will seek to correct any errors.

### **Link Disclaimer**

The Commission's website has provided links to a number of related websites in an effort to provide ample resources to visitors. The Commission cannot accept responsibility for the accuracy or content of those pages or guarantee full access to those pages, nor should the Commission be considered as endorsing any of the outside sites linked from the main site.

These sites may have their own privacy statements posted which would take precedence over this policy. Visitors should read the privacy policies of individual sites and always be cautious about providing personally identifiable information without a clear understanding of how that information will be used.

### **Accessibility Statement**

Every effort has been made to ensure the pages on this website are accessible to individuals with disabilities in accordance with Section 508 of the Rehabilitation Act. The website allows for increasing text size and allows voice readers to interpret content. If you or someone you know is not able to access any content on this website due to a disability, please let us know by emailing [chancellor@wvhepc.edu](mailto:chancellor@wvhepc.edu).

### **Privacy Policy Changes**

Although most changes are likely to be minor, we may change our privacy policy from time to time, and in our sole discretion. We encourage visitors to frequently check this page for any changes to our privacy policy. Your continued use of this site after any change in this privacy policy will constitute your acceptance of such change.

### **Contact**

If you have questions about the Privacy Policy of the West Virginia Higher Education Policy Commission, please contact the Privacy Officer for the West Virginia Higher Education Policy Commission.

Pamela Woods  
Privacy Officer  
Phone: 304-558-1112, Ext. 210  
Email: [pamela.woods@wvhepc.edu](mailto:pamela.woods@wvhepc.edu)

For more information on privacy in West Virginia, please visit [West Virginia State Privacy Office](#).

Adopted: July 1, 2019





## West Virginia Higher Education Policy Commission West Virginia Community and Technical College System



### Privacy Management and Incident Response Plan

#### 1. Purpose

The purpose of this plan is to provide effective and appropriate response procedures to events and situations that may expose personally identifiable information (PII), student education records collected and maintained by the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Community and Technical College System (Council) to unauthorized individuals, both internally and externally.

The procedures in this plan are based on industry standards and adheres to state and federal privacy laws and regulations<sup>1</sup> and best practices recommended by the U.S. Department of Education's Student Privacy Policy Office (SPPO). This plan is reviewed annually or as circumstances dictate and revised as applicable.

#### 2. Scope and Authority

This plan applies to all employees (paid and unpaid, full-time and part-time, technical and non-technical), vendors, contractors, researchers, and all other individuals acting as official agents of the Commission or Council. The plan encompasses all data and information collected and maintained, whether in electronic, paper, or other format and regardless of the collection and storage method.

The Executive Vice Chancellor for Administration for the Commission and Council has appointed a Privacy Officer and named them as the designated authority to establish and maintain a system of data privacy and information security and protection. The Privacy Officer has the authority needed to make crucial decisions, delegate tasks, serve as a liaison between leaders and stakeholder groups, and provides relevant direction to manage and maintain privacy and deal with real and potential threats.

#### 3. Definitions

It is vital for the elements and concepts associated with privacy and privacy incidents be consistent, understood, and evident. The following definitions are provided to describe terms and concepts used throughout this plan.

Access means to view, print, download, copy, or otherwise retrieve data from a computer, computer system, or computer network.

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<sup>1</sup> State and Federal privacy laws and regulations include but are not limited to the following: W.V. Code §46A-2A et seq., [Family Educational Rights and Privacy Act \(FERPA\)](#), the [Higher Education Act of 1965 as revised in 2008 \(HEA\)](#), the [Gramm-Leach-Bliley Act \(GLB\)](#), and the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#)

Authorized Party refers to those individuals or organizations with consent to access information or with a legitimate interest in or need for access to PII and other records about individuals in order to perform appropriate tasks necessary for their jobs.

Consent in general, means permission from a parent/guardian, eligible student, or other responsible party to disclose information from official records to another party.

Data breach is any successful or confirmed incident in which personally identifiable information (PII), sensitive, confidential or protected data has been disclosed and/or accesses by an unauthorized individual or in an unauthorized fashion. Data breaches are a subcategory of privacy incidents.

Disclosure means to permit access to, release, transfer, or otherwise communicate personally identifiable information (PII) from a record to any party by any means, including electronic, written, or verbal.

An authorized disclosure refers to any disclosure of information about an individual for which that individual has given consent or that is permitted or required pursuant to federal or state regulation for legitimate purposes. These types of disclosures are made to authorized parties.

An unauthorized disclosure refers to any access to or disclosure of information about an individual that is not authorized or that is made to or by an unauthorized party. Unauthorized disclosures can be internal to the agency or institution, or to an external organization or party. They may be the result of personal negligence, system failures, or malicious acts.

Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

Personally Identifiable Information (PII) includes any information that by itself or in combination with other information, has the potential to directly determine or find the identity of an individual person and could be harmful to an individual if disclosed.<sup>2</sup>

- Social security number, state/federal issued personal identification number, or driver's license number.
- Banking or credit card numbers.
- Financial information including State and Federal tax information.
- Full name and personal address.
- Name of student's parent and other family members, or mother's maiden name.
- Citizenship or immigration status.
- Health and medical information.

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<sup>2</sup> See *Family Educational Rights and Privacy Act (FERPA) regulations*, [34 CFR §99.3](#), for a complete definition of PII specific to education data and for examples of education data elements that can be considered PII.

- Student grades, GPA, ACT or SAT scores.
- FAFSA or financial aid information.

Sensitive data is defined as data that if disclosed could result in a moderate level of risk. This includes data that is made available through open record requests or other formal or legal processes.

- Employment and training program data.
- Most data elements in State personnel records.
- State/federal contracts data.
- 

Indirect PII is information, when linked or linkable could be used to identify an individual

- Date or place of birth.
- Business phone.
- Race/ethnicity.
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Public information is characterized as being open to the public. Information that alone or in combination with other data can cannot be used by a reasonable person to identify an individual; furthermore, if disclosed or shared, it would result in little or no risk to the individual or agency.

- Directory information which includes information that is not generally considered to be harmful to an individual, or an invasion of privacy.
- Enrollment in an institution.
- Official honors and awards received.
- Participation in officially recognized sports.
- Agency public websites.
- Commission and Council policies and procedures.
- 

A Privacy Incident is an attempted or successful effort to access, acquire, disclose, or use PII or other information without authorization (i.e., any potential or actual unauthorized disclosure) regardless of the format. Such events may expose PII or other information to parties that are not authorized to access the information or may involve the misuse of PII or other information for purposes other than those that are explicitly permitted.

A security breach refers to any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy and data or information.

Unauthorized Party refers to individuals or organizations without consent and without a legitimate interest in having access to PII and other records about individuals.

#### **4. Examples**

Privacy incidents, including data breaches, may be the result of accidents or negligence on the part of authorized individuals, failures of systems designed to store and protect information, or malicious acts intended to cause harm. These incidents can take many forms including (but not limited to) the following examples:

- Lost, stolen, unsecured, or temporary misplaced equipment, tablets, laptops, physical records, or other devices such as smart phones;
- Lost or stolen storage media, including flash drives, CDs/DVDs, external hard drives, SD cards, or other external storage that contains PII or other sensitive data;
- Improper storage or disposal of records, whether electronic or physical;
- Posting or exposure of student information on public facing websites, public formal or informal reports and publications, social media, or other public venue;
- Intentional or accidental transmission of student information to unauthorized parties regardless of the method;
- Sharing data without full authorization or through non-secure methods such as email, texting, or other non-secure methods;
- Sharing, posting, or otherwise not securing your passwords that allow access to PII or other sensitive information;
- Compromised computers or servers, such as times where a machine or network has been hacked or accessed by an unauthorized party;
- Receipt of student information that an individual is not entitled to;
- Use of student or employee information for purposes other than official institution or agency related business;
- Malware, computer viruses, or other malicious attacks that could compromise the security of a computer or network; and
- Violations of official security policies and procedures.

The Commission and Council’s privacy management and incident response process is designed to protect against and respond swiftly to all privacy incidents; special care is indicated in responding to those incidents that are malicious in nature and those that are data breaches.

## **5. Roles and Responsibilities**

Privacy management and data security is the responsibility of all employees, vendors, contractors, researchers, and all other individuals acting as official agents of the Commission or Council. Specific divisions and employees have heightened responsibilities to ensure appropriate data governance and to manage and respond to privacy incidents.

The general responsibilities for key staff involved in privacy incident response for the Commission and Council are outlined below.

### **Commission and Council Privacy Officer**

The Privacy Officer represents the Commission, the Council, West Virginia Network for Educational Telecomputing (WVNET), the public regional institutions, and the community and technical colleges on the state privacy management team. The Privacy Officer is responsible for all privacy management and incident response efforts undertaken by the Commission and Council. The Privacy Officer may appoint a designee to lead the efforts if the situation is warranted.

### **State Level Incidents**

When a potential incident is discovered at the state level, the Privacy Officer is responsible for initiating the incident response plan, reporting the incident to the State Privacy Office if applicable, assigning an incident response team, and leading the efforts from the initial identification of the incident through the post-incident review of lessons learned.

The Privacy Officer will review the incident to determine potential criminal activity underlying the incident or whether there was systematic or willful noncompliance with state or federal policy concerning data security or student privacy. The Privacy Officer will review all evidence related to an incident, collect more as necessary, and determine whether additional action is necessary in addition to resolution of the incident (e.g., referral for further enforcement, or recommendations to pursue criminal prosecution, as in the case of malicious data breaches).

### **WVNET or Institutional Incidents**

For incidents discovered at WVNET or the institutional level, the Commission and Council Privacy Officer will work with WVNET or the institution to help direct and oversee the response and investigation efforts. The Privacy Officer will coordinate with WVNET or the institution to ensure that an adequate response effort is underway.

The WVNET or institutional representative will provide the Privacy Officer with regular updates about the progress of all privacy incident response efforts, serve as a liaison between the Privacy Officer and WVNET or institutional leadership as necessary, and ensure that all necessary documentation relating to the incident is produced, disseminated to relevant stakeholders, the Privacy Officer, and archived as appropriate. The Privacy Officer will work with WVNET or the institution to ensure that proper handling and closing of the incident occur.

For WVNET or institutional incidents best handled by a state-level response, the Privacy Officer will be responsible for initiating the incident response plan, providing resources, and leading the efforts from the initial identification of the incident through the post-incident review of lessons learned.

### **Data Stewards and Technical Governance Group**

Some members of the data steward and technical governance group serve as experts for data security, confidentiality, and privacy. When appropriate, certain members of this group may assist the Privacy Officer in leading and coordinating responses for certain incidents.

### **Incident Response Team**

The incident response team supports the Privacy Officer by assisting with in assessing and classifying the incident, determining the appropriate immediate response, and managing all other aspects of response and mitigation, up to and including a post-incident review and recommendations for changes in policy or practice to prevent similar incidents in the future.

The size and composition of the team will vary based on the circumstances of the specific privacy incidents they will manage. The team will consist primarily of Commission and Council employees, and other identified staff, as appropriate.

When needed, the Privacy Officer may request external state agencies to participate on the response team to provide additional depth of knowledge or expertise and breadth of experience to the containment, investigation, and resolution process.

The Commission and Council's general counsel will be an ex officio member of all incident response teams formed at the state-level; the Privacy Officer will be an ex officio member of incident response teams formed at WVNET or the institutional level as applicable.

### **Senior IT Systems Administrator**

When warranted, the Privacy Officer may request assistance from the Commission's Senior IT Systems Administrator in the incident response process to examine the risk and magnitude of harm to internal systems due to the privacy incident. The IT systems administrator also assists with systems and network reviews and forensics. If warranted the Privacy Officer will recommend the use of forensics services offered by the state privacy office as part of BRIM insurance.

### **Official Communications**

Given the likelihood that some privacy incidents, particularly those that are data breaches, may require notification of the affected parties and/or the general public, the Executive Vice Chancellor for Administration and the Director of Communications will be involved in the privacy incident response process when warranted.

At a minimum, the Chancellor(s) and the Executive Vice Chancellor for Administration will be kept informed of the key facts of all major incidents and the progress of the response efforts so that he or she may accurately respond to or refer questions from news media.

When notification of students, or other individuals is required due to the nature or scope of a data breach, the Privacy Officer will relate the details to the Chancellor(s), the Executive Vice Chancellor for Administration, the Director of Communications and the Commission and Council legal staff so they can collaborate and provide support and assistance in creating appropriate letters and other messages explaining the incident and next steps families may need to take.

### **Data Governance Representatives**

Staff and stakeholders who serve in various capacities within the Commission and Council data governance structure will be informed of all privacy incidents and data breaches as applicable. They may be asked to serve on incident response teams or to provide guidance for appropriate and effective mitigation of threats and potential systemic weaknesses.

## Local Law Enforcement

Local law enforcement officials may need to be involved in investigations and prosecutions, depending on the circumstances of the individual incident. If computers, storage media, or other equipment are stolen, the individual from whom they were taken will need to file a police report. If the circumstances surrounding an incident or data breach warrant criminal prosecution, county prosecutors will need to bring appropriate charges in court.

## State and Federal Offices

If warranted, other state and/or federal officials may need to be consulted or notified about data breaches involving electronic student records or systematic noncompliance with state or federal law. Depending on the nature and circumstances of the incident, offices to be consulted may include the WV Auditor's Office, the WV State Privacy Office, the U.S. Department of Education (USED), the Federal Bureau of Investigations (FBI), or the U.S. Computer Emergency Readiness Team (US-CERT) at the Department of Homeland Security.

The Commission and Council reserves the right to involve any other state or federal offices or officials it deems necessary to adequately investigate, litigate, or resolve any privacy incident. Other stakeholders may be involved in the response process depending on the specific circumstances of any given privacy incident and kept informed of progress toward full resolution via regular updates.

In the case of privacy incidents or data breaches involving the Statewide Longitudinal Educational Database, all partner agencies will be notified and kept informed of progress toward full resolution. The Privacy Officer will develop annual reports about the privacy-related activities of the Commission and Council, including privacy incidents handled during the year.

## 6. Incident Classification

All incidents are classified into levels depending upon the type of unauthorized disclosure and the nature of the information disclosed. Depending on the incident, it is possible that it may not fit into one of the classification levels. The Privacy Officer will determine the proper classification.

**Level 1** – level 1 incidents include unauthorized internal disclosures of or access to data and information that does not include any sensitive PII about the individual(s) whose records were disclosed.

These incidents may be referred to the appropriate division head by the Privacy Officer for management and response. If this is the case, the Privacy Officer will provide suggestions and resources to assist with training or education to prevent similar incidents in the future.

**Level 1-A** – level 1-A incidents include authorized disclosure of data and information that may or may not include sensitive PII about individual(s) but was transmitted in an unauthorized manner (Ex. Sending PII via email).

**Level 2** – level 2 incidents include unauthorized internal disclosures of or access to data and information that does include sensitive PII about the individual(s) and unauthorized external disclosures of or access to PII that does not include any sensitive PII.

**Level 3** – level 3 incidents involve unauthorized external disclosures of or access to data and information that does include sensitive PII about individual(s). Unauthorized disclosure of or access to any data and information containing sensitive PII is considered a data breach, regardless of whether the disclosure was internal or external.

All level 3 incidents will be immediately reported to the WV State Privacy Office the Chancellor(s), the Executive Vice Chancellor for Administration, and the data governance implementation team.

All incidents, regardless of classification level, must immediately be reported in accordance with the procedures described below in the incident reporting section.

## **7. Incident Reporting**

Privacy incidents are discoverable through many mechanisms such as routine network monitoring, suspicious activity found during database activity monitoring, security audits, loss or theft of equipment, or failure to comply with policies and procedures. It is possible for anyone to find or suspect that an incident has occurred.

It is vital that all suspected incidents be investigated. It is the responsibility of all employees, contractors, vendors, researchers, authorized representatives, other agents, and/or stakeholders to report any suspected or confirmed privacy incidents to the Privacy Officer for immediate investigation and handling.

Incident reports should, to the extent possible, use established forms (see Appendix A) and shall include as much information as possible. At minimum, they must include the following.

- Location the incident occurred.
- Date the incident occurred (if known) and the date the incident was discovered.
- Description and list of the specific information disclosed, including database field names if appropriate.
- Number of individuals whose information was affected or disclosed.
- How the incident happened and indicate if the incident was intentional or the result of an accident/negligence.
- How the incident was discovered.
- Name of who reported the incident and if appropriate, the name and title or role of the individual who disclosed the information.
- Description or list of the person/people to whom the information was disclosed.
- What steps or actions, if any, have been taken to repair or correct the issue.
- Detailed description of the incident, and any other information that may be relevant.



All incidents—whether suspected or confirmed—must be reported to the Privacy Officer. When employees, contractors, vendors, researchers, authorized representatives, other agents or stakeholders discover an incident, the Commission and Council Privacy Officer should be notified as quickly as possible but **absolutely no later** than 24 hours following the discovery.

## **8. Response Procedures**

The following response procedures may not always happen in a linear process as described and situations may require additional steps, multiple steps occurring simultaneously, or other deviations from the steps listed. This is to be expected based on the nature of the incidents.

All incidents will be fully investigated, and all evidence relating to the incident must be preserved and/or archived for future investigation in accordance with best practices. Technology staff will be consulted to ensure appropriate preservation of electronic evidence. When a privacy incident involves out-of-state individuals, additional investigation may be required, and that state's breach and notification policy reviewed.

## **9. Detect and Identify**

Upon receiving an incident report, the Privacy Officer will determine if an incident has occurred or if it can be considered a non-incident. If an incident has been determined to have occurred, the Privacy Officer will implement the incident response process, review the initial report and information, ask follow-up questions, and make a preliminary assessment as to the severity and classification of the incident.

The Privacy Officer will inform the incident response team members and report the privacy incident to the WV State Privacy Office when applicable. The Privacy Officer may also inform appropriate agency leaders or other officials to alert them to the incident and the initiation of a formal response when applicable.

## **Evidence Collection and Documentation**

A formal incident log will be established to document the incident, its causes, the response, and potential steps for future prevention and/or deterrence efforts. The log must be updated regularly throughout the response process (i.e., each time a meeting is held, or decision is made) and must be sufficiently detailed to allow for use in similar incidents.

The Privacy Officer may consult the Commission and Council general counsel if applicable, to determine appropriate strategies and procedures for collecting, handling, storing, and documenting the custody of any evidence that may need to be collected throughout the response and investigation, particularly if the evidence may become part of a criminal prosecution.

## **10. Contain and Recover**

Following determination of a level 1-A, 2 or 3 incidents, the incident response team will assemble per the Privacy Officer's direction to begin reviewing available information and devising an appropriate strategy for containment and response.

The composition of teams will vary based on the nature and severity of the incident and may include, as needed, experts in other areas such as data governance, technology, communications, human resources, and legal issues.

As the team is assembling and beginning to review information, the Privacy Officer will supervise efforts to contain the incident and recover any exposed PII. If steps have already been taken to contain the incident and retrieve the information, all efforts should be documented.

If containment and PII retrieval efforts have not yet been started, the Privacy Officer will direct and document that work immediately. This includes determining and assessing the most appropriate course of action to contain the incident and mitigate risks. The course of action shall be designed to (1) contain the incident, particularly those of an ongoing nature; (2) stop or limit further data loss or exposure; and (3) mitigate potential adverse effects for all those affected.

As part of assessing the appropriate course of action, the potential benefits and risks associated with the proposed actions, including whether any action may introduce additional vulnerabilities or pose political risks should also be assessed.

Documentation will include evidence or statements of belief about whether the exposed PII will be misused or further disseminated. All individuals who will be responsible for implementing any part of the plan will be provided with the full plan to ensure a comprehensive understanding of how their responsibilities are related to or associated with other steps or components of the process.

## **11. Investigate**

During the contain and recover process, the incident response team will review all available information about the incident, including its potential causes and impacts. The team will determine the immediate cause and explore potential related vulnerabilities or threats. Assistance from subject matter experts should be sought as needed.

As necessary, the incident response team may gather additional information in order to document the incident more completely. Such efforts may include additional requests for documentation or evidence; interviews with subject matter experts, key personnel, or others with knowledge of the incident, and other reasonable and necessary steps. It is vital that the gathering of additional information should not prevent or delay action.

Given the available information about the cause of the incident and the nature and extent of the exposed information, the incident response team will analyze possible risks to affected individuals,

data systems, equipment, institutions, and other external agencies. The team will then reassess the severity and scope of incident given all available information and the assessment of risk.

The incident response team, working with other staff members with knowledge of the incident, will prepare a complete inventory of the data exposed during the incident or data breach. To the extent possible, a complete list of the individuals whose information was disclosed should be created. This list should include as much contact information as possible.

### **Identify Related Threats or Vulnerabilities**

Throughout the investigation, the team should work to identify any other potential threats or vulnerabilities to the system, the data, or any processes used to enter, store, manage, or extract information.

The incident response team should remain mindful that threats or vulnerabilities could include inadequate awareness or training among staff, insufficient security procedures, insufficient capacity for comprehensive security, limited resources, and other factors.

### **Initial Briefing Report**

The incident response team will prepare and submit an initial briefing to the Privacy Officer regarding the nature and scope of the incident and the preliminary identified risks.

### **Update and Advise**

Situational status updates will be provided to the Privacy Officer who will keep key personnel at the appropriate levels abreast of the status. The frequency with which updates are provided may vary based on the level of the incident as well as its scope and potential for negative publicity and/or political ramifications.

The Privacy Officer will engage division heads, including legal representatives, in discussions about necessary processes if criminal activity is suspected and law enforcement involvement may be warranted.

The Privacy Officer will advise all other staff aware of the incident to keep all details in confidence until notified otherwise.

### **Preserve Evidence and Update Documentation**

The Privacy Officer will ensure that the incident log/record is fully updated throughout the response process. Other relevant documents (e.g., emails, reports) will be collected and preserved appropriately and in accordance with established protocol.

In cases involving breaches of electronic systems, the Privacy Officer will consult directly with agency technology experts to determine appropriate ways to capture and preserve information about the systems at the time the compromise was discovered.

## **12. Communicate**

The Privacy Officer will ensure that all relevant employees, stakeholders, and leaders have been fully informed about incident and briefed on the ongoing investigation and response efforts.

For level 1-A, 2, and 3 incidents, the Privacy Officer will report the incident to the state privacy office and ensure that the Executive Vice Chancellor for Administration and the Director of Communications are fully aware of all pertinent facts and able to answer questions from members of the media, should the need arise.

As needed, the Director of Communications should review the communications plan with the Privacy Officer and Executive Vice Chancellor for Administration to prepare for managing public notification and media inquiries.

### **Determine Notification Needs**

For Level 1-A and 2 incidents, the Privacy Officer will determine whether notification of affected individuals is required. For Level 3 incidents, which involve the external disclosure of sensitive PII, notification of affected individuals is often required. Final notification determination is dependent on many factors including state or county residence.

The Privacy Officer will collaborate with the State privacy office, the Executive Vice Chancellor for Administration and the Director of Communications to determine appropriate notification methods and message content based on the incident type, scope, and severity and the stakeholder group affected.

It is possible that some affected individuals may not be directly reachable, therefore plans must include reasonable methods for providing information for these individuals.

It will be determined whether a toll-free number and/or incident-specific email address is needed to assist with communication and notification efforts. The possibility of hosting an incident-specific informational website, if the scope and severity of the incident warrant such a resource will also be considered. Incident type specific templates may be developed and made available for phone calls, email messages, letters, presentations (e.g., PowerPoint), and informational websites.

Based on information gathered during the initial stages of the response, the team will develop a contact list for individuals directly affected by the incident (i.e., individuals whose information was exposed). At this step, the team will work to confirm the accuracy of the available contact information.

### **Notify Affected Stakeholders**

When notification is required, affected individuals must be notified about the incident as soon as possible and as is required by state breach laws. Normally this will be no longer than 10 calendar days after the incident is discovered and the identities of affected individuals are determined.

The Privacy Officer will consult State or federal resources to determine notification requirements. In general, notifications must provide as much information about the incident as is reasonable, including what happened, the likely cause, what staff are doing to resolve the issue, and how the incident may affect the individual being notified. Notifications should also describe any steps or actions affected individuals may need to take to proactively protect or monitor their identity and personal records.

Press releases, press conferences, media advisories, and any other mass communication efforts should, to the extent possible, be timed to coincide with or follow notification of individuals. Circumstances may dictate different priorities and shorter timelines; guidance from the State privacy office should be followed in planning all mass communications. The Executive Vice Chancellor for Administration and the Director of Communications should serve as the key representative for all comments to the public or the media.

### **Report to Key Leaders and Other Officials**

All notifications that are required to be provided to the governor, other governmental officials, or other external stakeholders should be concise while providing sufficiently descriptive information about the incident, including the cause(s), the scope and severity, number of individuals affected, and the work being done to respond to the incident and mitigate potential harms.

The Privacy Officer will provide regular updates or reports for key internal leaders and stakeholders (e.g., administrators, technology personnel, staff who may have been the victims of equipment theft or hacking) to keep them fully informed of the incident and progress toward resolution.

As needed, and in consultation with the Privacy Officer, the State privacy office, Commission and Council leadership, and general counsel, the team will determine whether federal officials need to be notified of the incident. Federal officials may include the Family Policy Compliance Office (FPCO) at the U.S. Department of Education; the United States Computer Emergency Readiness Team (US-CERT) at the Department of Homeland Security; the Federal Bureau of Investigations (FBI), or other federal offices or officials.

If warranted, law enforcement officials (to include police and local prosecuting attorneys) will be contacted to assist with the response to any incidents involving hacking or malicious attacks and all incidents involving the loss or theft of equipment.

Police reports are needed for all cases involving the theft of equipment or other resources and materials containing PII.

### **Communicate with the Public**

If the incident is widespread, has potential high visibility, may have political ramifications, or involves particularly sensitive data, the Privacy Officer will present available information to the Chancellor(s), Executive Vice Chancellor for Administration, and the Director of Communications to determine whether public notification or reporting is needed.

As needed, the Commission and Council will communicate broadly with the public about the incident. The communication team should enact a pre-established crisis communication plan to avoid confusion, distribution of misinformation, or other preventable mistakes in the midst of the response.

The Chancellor(s), the Executive Vice Chancellor for Administration, and the Director of Communications should lead all efforts in communicating with the public. Other representatives or spokespeople for the Commission and Council should follow all guidance from the Executive Vice Chancellor for Administration relating to communicating with external audiences.

### **Preserve Evidence and Update Documentation**

The Privacy Officer will ensure that the incident log/record is fully updated throughout the reporting process. Other relevant documents (e.g., emails, reports, notifications) will be collected and preserved appropriately and in accordance with established protocol.

All notifications (including copies of letters, emails, or phone scripts; websites created for the incident; etc.) will be archived for future reference. The Privacy Officer will ensure that all evidence is collected and preserved appropriately and in accordance with established protocol.

### **13. Review and Repair**

The Privacy Officer and the incident response team will conduct a full review of the investigation and of the incident. The Privacy Officer and the incident response team will determine whether an internal review (conducted by internal staff) is appropriate or whether an external/third-party review is warranted. Different types of incidents may require different types of reviews based on causes, scope or severity, and potential political or public relations implications.

The incident response team should examine and document any lapses between the actual occurrence and the discovery of the incident as well as the time from incident discovery to reporting to the Privacy Officer. Throughout the investigation, the team should continue documenting and preserving evidence according to established protocol and/or instructions from the Privacy Officer or general counsel.

The team should review and assess the effectiveness of initial response efforts. Any preliminary strengths and weaknesses in the response should be fully explored and documented.

The incident response team should review and assess the potential threats or vulnerabilities to the system, the data, or any processes used to enter, store, manage, or extract information that was found through the investigation and document these.

To the extent possible, the team should classify threats or vulnerabilities as high- or low-priority based on their severity and the likelihood that they may result in future privacy incidents.

## **Develop and Implement Plan for Repairs**

In addition to the immediate response processes that were undertaken, the incident response team should develop a plan (or set of plans) to make comprehensive repairs or corrections to the systems or processes that contributed to the incident. The team should also plan for corrections to any related vulnerabilities identified through the investigation.

The team may collaborate with subject matter experts to develop appropriate, comprehensive, and responsive plans. Plans for repairs (or components of those plans) should be prioritized based on the severity of the threats and the likelihood that future incidents may arise as a result of the vulnerabilities.

The team should develop short-term and long-term timelines to make updates or corrections for factors that may not be immediate threats but that could present risks in the future.

The Privacy Officer will collaborate with administrators or other leaders to ensure that immediate action is taken to repair system vulnerabilities or security lapses identified as high-priority or likely to result in future incidents.

Repair plans should be implemented by appropriately qualified staff or contractors. The Privacy Officer will be provided with updates about the progress of repairs on an ongoing basis until all repairs are successfully completed.

## **Determine Appropriate Sanctions**

If appropriate (and in accordance with state, federal, and other relevant policies and procedures), the Privacy Officer will collaborate with general counsel to determine what appropriate sanctions or penalties might be for individuals, agencies, or other agents (e.g., contractors, vendors) who caused or substantially contributed to the cause of the incident.

In consultation with general counsel, the Privacy Officer, and Commission and Council leadership should discuss and determine whether any civil action against individuals, agencies, or other agents may be appropriate or warranted.

The incident response team, administrators, and staff who were directly involved with an incident should cooperate and collaborate with law enforcement and local prosecutors as warranted in any criminal investigations (e.g., for theft of equipment, electronic hacking or other malicious attacks). Criminal prosecution may be warranted in cases of malicious attacks or theft of property. Such determinations will be the exclusive purview of local prosecuting attorneys.

The incident response team, in consultation with the Privacy Officer, general counsel, and appropriate Commission and Council leadership, should discuss and determine whether a formal complaint should be filed with the FPCO for any violations of FERPA by individuals, agencies, or other agents.

All repair plans should be distributed to appropriate internal staff for documentation and prioritization of work efforts. The Privacy Officer will ensure that the incident log/record is fully

updated throughout the repair process. Other relevant documents (e.g., emails, reports, plans, work orders) will be collected and preserved appropriately and in accordance with established protocol.

## **14. Recover**

### **Verify Success of Repair Efforts**

The Privacy Officer will work to confirm and document that all repair efforts have been successful. Confirmation may include checks of electronic systems to ensure they are fully functional and verification that new procedures or processes work as intended. Staff should reestablish all operations after making necessary repairs to systems and processes.

The Privacy Officer will verify that individuals have received appropriate training and/or reminders of their responsibilities concerning PII and personal records. As necessary and warranted, the Privacy Officer may ask staff to provide formal assurances of compliance or improved conduct in the future.

The Privacy Officer will provide all affected and involved stakeholders with an update to report that the incident has been successfully resolved. As necessary, a summary of actions to date may be included as part of that notification.

If warranted, the Privacy Officer or other designated staff member should follow up with individuals whose information was inappropriately disclosed to determine whether they have any lasting needs or concerns resulting from the incident. The team should collaborate with those stakeholders to develop an appropriate plan to address those needs or concerns.

### **Follow Through with Sanctions**

At this time, appropriate personnel should levy any sanctions or penalties deemed appropriate. The person responsible for this task will vary depending on the nature or the sanction and the individual or entity against whom it will be levied. The team should determine who that person should be.

Any other actions determined to be appropriate (e.g., filing complaints with the FPCO, pursuing criminal or civil action through the courts) should be implemented. A staff member should be designated to follow up on these actions and provide ongoing reports to the team and relevant administrators until a final resolution is reached.

The Privacy Officer will ensure that the incident log/record is fully updated throughout the recovery process. Other relevant documents (e.g., emails, reports) will be collected and preserved appropriately and in accordance with established protocol.

## **15. Access and Learn**

It is vital that all lessons learned are appropriately shared and documented. This will help in the prevention of future privacy incidents and with future incident response plan trainings. These lessons will also help to update preparedness activities.



## **Debrief Incident (Causes, Identification, and Response)**

The Privacy Officer will convene the full incident response team to review the incident and all actions taken in response. The team will assess the effectiveness of the response effort. Strengths and weaknesses will be fully documented.

The team will detail and document the lessons learned from both the incident itself and from the response effort. These lessons learned will be included with the incident documentation and be used in the next incident response training if applicable. The team will develop recommendations to assist with future incident prevention and response efforts.

## **Review and Revise Policies, Procedures, and Practices**

The Privacy Officer and the incident response team will review existing policies, procedures, plans, and practices in light of lessons learned. The team will recommend any necessary changes and/or new policies, procedures, plans, and practices to improve security or better ensure privacy.

Proposed changes in Commission or Council policy and procedures will be developed, reviewed, and approved through the standard policy revision process. Based on lessons learned, there may also be recommendations to change, add, or otherwise modify the current incident response processes to improve response to future incidents.

## **Share Lessons Learned with Stakeholders**

The Privacy Officer will lead the incident response team in sharing lessons learned from the incident and the response process with other stakeholders. Such stakeholders may include personnel within the Commission and Council, other state agencies, and public higher education institutions.

If new tools or resources are developed as a result of the incident response, those tools or resources should be shared broadly with all Commission and Council divisions.

## **Provide Training and Support**

As warranted, the Privacy Officer will coordinate with other staff to ensure that training materials and resources for the processes or systems affected by repairs are updated appropriately.

Training materials and resources pertaining to any policies, procedures, or practices related to the cause of the incident will also be reviewed and updated as needed in light of lessons learned.

The Privacy Officer will provide training and support for all divisions and employees as well as other official agents as changes are implemented and made following incident response. The Privacy Officer will communicate on an on-going basis with stakeholders regarding new or revised policies, plans, procedures, and processes.

As needed, the Privacy Officer will provide reminders about existing policies, plans, procedures, and processes that may be related to the incident (e.g., policies that were not followed correctly) or that are identified as potential risks or vulnerabilities.

### **Update and Archive Documentation**

The Privacy Officer will ensure that all incident documentation is complete, up-to-date, and inclusive of all necessary components, including:

- Causes of the incident.
- How the incident was discovered.
- Findings of the full investigation.
- Actions taken to repair the incident (including dates/times and names of actors).
- Current system status if applicable (post-repair and recovery)..
- Other relevant information (including whether legal action was pursued)
- Names of the incident response team members.

The incident response team will create a concise summary of the incident from identification through resolution and lessons learned, and a formal summary of lessons learned and recommendations for the future. These documents will be given to the Privacy Officer for appropriate distribution.

All documentation and records must be archived according to established protocol.

## **16. Enforcement**

Commission and Council employees found to have violated these guidelines or any other privacy-related procedures or regulations may be subject to disciplinary or corrective actions, including, but not limited to, revocation of privileges up to and including termination of employment. Certain violations, misuse, or disclosures of confidential information may include civil and/or criminal penalties.

Contractors, vendors, researchers, and other agents working for or on behalf of the Commission and Council who are found to have violated these guidelines or any other privacy-related procedures or regulations will be subject to reprimands and action commensurate with the violation, including termination of contracts or pursuit of other legal action.

## Appendix A

### Commission and Council Incident Report

Please complete the following form with as much detail as possible. **DO NOT** include actual personally identifiable information (PII) in this form.

Return completed form to Pam Woods, [pamela.woods@wvhepc.edu](mailto:pamela.woods@wvhepc.edu)

Name: <small>(Name of Person Completing Form)</small>		Date: <small>(Date form completed)</small>	
Location of incident:		Date incident occurred:	
Please briefly describe the incident:			
Please list the specific <b>type</b> of information disclosed below. Include database field if appropriate. <i><b>(DO NOT list actual data that was disclosed here)</b></i>			
Number of individuals whose information was disclosed:		Number of individuals who received disclosed information <i>(if known)</i> :	
Describe how the incident occurred below. Include if the incident was intentional or the result of an accident/negligence:			
How was the incident discovered?			
Name of individual who disclosed the information <i>(if known)</i> :			
Division of individual who disclosed the information <i>(if known)</i> :			
List individual(s) to whom the information was disclosed:			
Please list the steps (if any) that have been taken to repair or correct the issue below.			
Please give a detailed description of the incident and include any other information that may be relevant to the investigation below.			



## West Virginia Higher Education Policy Commission West Virginia Community and Technical College System



### Information Security and Acceptable Use Policy

#### 1. Purpose

This policy establishes and explains the guidelines and responsibilities for individuals who use the technology resources owned or managed by the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Community and Technical College System (Council). The intent of this policy is to explain the range of acceptable and unacceptable uses of Commission and Council provided information technology (IT) resources and is not necessarily all-inclusive of information security. IT resources may include anything with a processor, communications capability, or storage.

This policy is based on the State of West Virginia Office of Technology's Information Security Policy ([WVOT-PO1001](#)) and Email Use Standards Policy ([WVOT-PO1005](#)), the West Virginia Executive Branch Accountability Policy ([WVEB-P101](#)), industry standards, security best practices, and applicable state and federal laws and regulations. This policy is reviewed annually or as circumstances dictate and revised as applicable.

#### *Related Policies and Procedures:*

- Incident Response Plan
- Data Classification and Protection Policy
- Data Access and Management Policy

#### 2. Scope

This policy applies to all employees (paid, unpaid, interns, full-time, part-time, technical, and non-technical), vendors, contractors, and all other individuals, collectively referred to as "users", who have access to or use of the IT systems, applications, and resources managed or owned by the Commission and Council. It is related to security and protection of computer systems, applications, IT resources, data and information, and networks owned or managed by the Commission and Council.

#### 3. Principles

- 3.1 In order to ensure that security policies and procedures remain sound, it is important that everyone realize that security is a team effort. It is important to protect the security of all IT systems, applications, servers and the network that the Commission and Council owns or manages.
- 3.2 The Commission and Council realize that security is a global concern. It affects not only those assigned to administer and audit security, but also end users at every level. In order to ensure that security policies and procedures remain sound, it is important that all users realize that security is a team effort and that everyone plays an important role.

- 3.3 It is vital that all users are made aware that potential threats to IT systems, networks, resources and users can come from both inside and outside of the organization. Proper training and awareness activities are an essential part of the overall IT security program.

#### **4. Policy**

- 4.1 All IT resources, including but not limited to hardware, software, data, and physical or virtual networks are owned by the Commission and Council and the State of West Virginia unless controlled by a contractual or vendor agreement.
- 4.2 All users should have no expectation of privacy while accessing or using Commission and Council provided IT systems, technology, applications, and resources.
- 4.3 All users of Commission and Council technology resources must adhere to agency rules, policies, procedures, as well as applicable state and federal laws and regulations.
- 4.4 IT systems and resources are designated for authorized purposes. The Commission and Council reserves the right to monitor and review usage as required for legal, audit, or legitimate authorized operational or management purposes.
  - 4.4.1 Users are permitted to use these resources for limited personal use provided they have the permission of their supervisor, the personal use does not affect their job performance or responsibilities, and that such use does not conflict with this or any other policies.
  - 4.4.2 Users must never redirect or save Commission and Council documents on personally owned equipment without prior authorization.
- 4.5 All users, must sign an IT Security Statement of Acknowledgement indicating that they have read, understand, and will abide by all Commission and Council policies and procedures regarding IT security and acceptable use. Users must review the policies annually for updates and may be denied the use of IT resources by refusing to sign.
- 4.6 All devices accessing Commission and Council owned or managed systems, applications, or networks, regardless of ownership, must be equipped with up-to-date virus protection software where applicable.
- 4.7 All users are responsible for securing their own computer. Users must lock computers and/or laptops when leaving them unattended or not in use. Users are responsible for any actions that can be identified to have originated from their assigned computer.
- 4.8 All users are required to comply to the ethical standards governing copyright, software licensing, and intellectual property.

- 4.9 No unauthorized software will be installed on Commission and Council systems unless expressly authorized. The Senior IT Systems Administrator will authorize all software installation as applicable.
- 4.10 All users will utilize, maintain, disclose, and dispose of all information resources, regardless of medium, according to law, regulation, and/or policy.
- 4.11 Users must not intentionally introduce a virus into a Commission and Council owned computer, use unauthorized peer-to-peer networking or peer-to-peer file sharing, or attempt to disable, defeat, or circumvent any security controls.
- 4.12 Users must not use any Commission and Council IT resources to promote harassment or illegal discrimination of any kind.
- 4.13 Users are prohibited from saving files to their local machines, unless they are saving working copies for temporary use. All users must use the secure network shares provided to them.

## 5. Data and Information Privacy and Security

The Executive Vice Chancellor of Administration for Commission and Council has appointed a Privacy Officer and named them as the designated authority to establish and maintain a system of data and information security and protection.

- 5.1 Data and information resources are designated for authorized purposes. The Commission and Council has a duty and a right to review questionable activity.
- 5.2 All users must familiarize themselves with the Data Classification and Protection policy. The Privacy Officer and the Division of Policy and Planning determine the classification of all data and information, and users must refer to that document when there is a question about classification.

The Data Classification and Protection policy has full details on how data is classified and how it should be protected. The policy classifies all data and information into 3 levels.

- 5.2.1 **Level 1 Restricted** – Data is classified as restricted when unauthorized disclosure could cause a significant level of risk, the data is protected by state, federal, and local privacy laws, and unauthorized access has the potential to cause harm. This includes sensitive, confidential, personally identifiable information (PII) such as SSN, banking and financial information, name, and address.
- 5.2.2 **Level 2 Sensitive** – Sensitive data is defined as data that if disclosed could result in a moderate level of risk. This includes data that is made available through open record requests or other formal or legal processes. Access is limited. Sensitive data may include most data elements in state personnel records or employment and training program data.

- 5.2.3 **Level 3 Public** – Public data is information that alone or in combination with other data cannot be used by a reasonable person to identify an individual and if disclosed or shared, it would result in little or no risk to the individual or agency. This includes information such as enrollment in an institution, agency public websites, or Commission and Council policies and procedures.
- 5.3 Restricted and sensitive data or information is **never** to be stored on local machines, smart phones, tablets, laptops, USB or flash drives, external hard drives, digital media, or other portable devices without express prior authorization from the Privacy Officer or Division of Policy and Planning and proper encryption is used.
- 5.4 Restricted and sensitive data or information is **never** to be stored on cloud services without prior authorization from the Privacy Officer or Division of Policy and Planning and proper encryption is used.
- 5.4.1 Examples of cloud storage and services that **are not approved**, and must be approved beforehand include, but not limited to:
- Dropbox
  - Microsoft One Drive (including One Drive for business)
  - Google Drive
  - Google Docs
  - File Den
- 5.5 The use of personal storage, equipment, or personal storage for restricted or sensitive data or information is **strictly prohibited**. Any exception to this must have prior authorization from the Privacy Officer or Division of Policy and Planning, approved virus protection, and proper encryption.
- 5.6 If at any time equipment changes ownership or is ready for disposal, users must notify the Senior IT Systems Administrator to ensure that there is no restricted or sensitive data or information located on the equipment.
- 5.7 At no time shall any Commission and Council data or information be used or disclosed for a personal or non-work-related reason.
- 5.8 Users must guard against access to files and take precautions to protect the data and information they have access to.
- 5.8.1 Physical documents, files, folders, etc. that contain restricted or sensitive data or information must be kept in locked drawers or file cabinets when not in use.
- 5.8.2 Offices that have restricted or sensitive data or information should be kept secure and locked when not in use.
- 5.8.3 Users must log off or lock their computer every time they are away from it.

- 5.8.4 Restricted or sensitive data or information handled outside of secure areas must receive the same level of protection as if it were on-site.
- 5.9 Users working remotely or carrying laptops or tablets must use the Commission and Council supplied VPN when possible. Public WIFI and internet connections are not secure and should not be used when working on restricted or sensitive documents or when viewing restricted or sensitive data or information.
- 5.10 Prior to collecting, sharing or disclosing, or sending/receiving data, files, or information that contain restricted or sensitive data or information, users must consult with the Privacy Officer or the Division of Policy and Planning to ensure proper controls are in place and the sharing is in compliance with state and federal laws.
- 5.11 All contractors and vendors must sign a contract agreeing to abide by all Commission and Council security and data privacy policies and procedures when dealing with data or information of any kind.
- 5.12 All Commission and Council sponsored or run websites and applications must have annual privacy reviews conducted by the Privacy Officer and contain or point to approved privacy notices or policies.
- 5.13 All contracts, grant proposals, data sharing agreements, memorandum of understandings, or other agreements that include data sharing, exchange of information, or disclosure of any kind must be reviewed by the Privacy Officer prior to signature to ensure compliance.
- 5.14 Privacy impact assessments must be completed when a new project (grants, third-party services, cloud applications, memorandum of understandings, data sharing, etc.), webpage, or internally developed application is in the development stage or when changes are being made. Annual reviews will be completed as applicable.
- 5.15 The Privacy Officer or the Division of Policy and Planning shall have the right to monitor and audit the collection, use, disclosure and retention of the data collected and maintained by the Commission and Council to ensure compliance with this and other privacy related policies and procedures.

## **6. Privacy and Security Incidents**

All users must immediately report any observation of an attempted or suspected security or privacy incident<sup>1</sup> or any violation of this policy. Users should review the full incident response plan for complete details.

A privacy or security incident is any event that involves the misuse or computing resources, is disruptive to normal system operations, or an attempted or successful effort to access, acquire, disclose, or use PII or other information without authorization.

- 6.1 Examples include but are not limited to the following:

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<sup>1</sup> See Commission and Council Incident Response Plan for details on privacy incidents.



- 6.1.1 Lost, stolen, unsecured, or temporary misplaced equipment, tablets, laptops, physical records, or other portable devices such as smart phones.
- 6.1.2 Lost or stolen storage media, including flash drives, CDs/DVDs, external hard drives, SD cards, or other external storage that contains PII or other sensitive data.
- 6.1.3 Improper storage or disposal of records, whether electronic or physical.
- 6.1.4 Posting or exposure of student information on public facing websites, public formal or informal reports and publications, social media, or other public venue.
- 6.1.5 Intentional or accidental transmission of student information to unauthorized parties or to authorized parties but using unsecure methods such as emailing restricted or sensitive information.
- 6.1.6 Malware, computer viruses, or other malicious attacks that could compromise the security of a computer or network.
- 6.1.7 Violations of official security policies and procedures.
- 6.1.8 Compromised computers or servers, such as times where a machine or network has been hacked or accessed by an unauthorized party.
- 6.1.9 Sharing data without full authorization or through non-secure methods such as email, texting, or other non-secure methods.
- 6.1.10 Receipt of student information that an individual is not entitled to.
- 6.1.11 Use of student or employee information for purposes other than official institution or agency related business.
- 6.2 IT system security incidents should be reported to the Senior IT Systems Administrator and privacy incidents should be reported to the Privacy Officer. Incident reports should, to the extent possible, use established forms and shall include as much information as possible.
- 6.3 Users must immediately contact the Privacy Officer upon receiving or obtaining restricted information that they are not entitled to and notify the Senior IT Systems Administrator upon becoming aware of an inappropriate use of Commission and Council provided IT resources.
  - 6.3.1 Users should consult an immediate supervisor if there is doubt concerning authorization to access any Commission and Council IT resource or regarding acceptable or unacceptable uses. If criminal activity is suspected or detected, reporting should occur without delay.

See the incident response plan for details on reporting.

## **7. Access Controls**

Access to technology systems, resources, and networks owned or managed by the Commission and Council imposes certain responsibilities and obligations and is granted subject to internal security and privacy policies, and applicable state and federal laws and regulations.

Data and Information access are the responsibility of the Privacy Officer and the Division of Policy and Planning and is outlined in more detail in [Section 5](#) of this document and in the Data Access and Management Policy.

## 7.1 User Management Process

- 7.1.1 System access is limited to authorized users, processes acting on behalf of authorized users, and devices
- 7.1.2 The Senior IT Systems Administrator and the Privacy Officer must be immediately notified of all new hires, terminations, transfers, or requests to modify user access. Access will be created, disabled, modified, or removed as applicable.
- 7.1.3 A listing of all those who are authorized to request user creation or modification is maintained and updated as required and accounts will only be created or modified if the request is from an authorized user.
- 7.1.4 User access is modified based on an “access replacement” strategy where the users’ existing access is removed during the modification process.
- 7.1.5 Existing user access is reviewed every 6 months to ensure that proper security is in place, access is legitimate and consistent with current job responsibilities.
- 7.1.6 When users are transferred, terminated, or retire, User IDs and authorizations are locked immediately and removed where appropriate.

## 7.2 Passwords

- 7.2.1 All users are provided with a unique User ID and password. As a new user, the password must immediately be changed using appropriate Commission and Council password requirements. A secure password must meet the following minimum requirements:
  - The minimum number of alphabetic characters that a password must contain is 8
  - The minimum number of non-alphabetic characters that a password must contain (where non-alphabetic characters are any ASCII printable characters that are non-alphabetic and are not national language characters) is 1.
  - The maximum number of times a character can be used in a password must not exceed 3.
  - When converting to a new password, the minimum number of characters in the new password that was not in the old password is 3.
- 7.2.2 All passwords are confidential and must not be shared under any circumstances.
- 7.2.3 All users are required to change their password every 6 months.

- 7.2.4 The Commission and Council maintain appropriate controls to protect the confidentiality of passwords used for authentication.
- 7.2.5 All users are responsible for securing and protecting their username and User ID. Users will be held accountable for any and all actions identified to have originated from their accounts.

## 8. Training and Awareness

The Senior IT Systems Administrator and the Privacy Officer are responsible for ensuring that all users, and others who access computer systems, receive sufficient training in policies and procedures, security requirements, correct use of information resources, and other administrative controls.

- 8.1 All new employees are required to complete mandatory security and privacy training within the first week of employment.
- 8.2 All users are required to sign a confidentiality and non-disclosure agreement.
- 8.3 All users are required to complete mandatory information security awareness and data privacy and security training or refresher annually.
- 8.4 All users will receive additional training as policies, standards, or procedures are changed, to the extent that the changes affect their jobs.
- 8.5 Users are required to participate in all periodic online security and privacy training assigned to them within the time set forth in the initial training email they receive. Failure to comply could lead to loss of access or revoked privileges until required training is complete.

## 9. Email

- 9.1 All users are provided with an email address that will be used for all official communications. Use of personal e-mail to conduct Commission and Council business is strictly **prohibited**.
- 9.2 All user content sent and/or received by Commission and Council supplied email is to be considered owned by the state and may be considered official state records subject to legal discovery and monitoring.
  - 9.2.1 Users should have no expectation of privacy when using email even for occasional personal use.
  - 9.2.2 Email is permitted to be connected to personal cell phones or tablets for business purposes, however this does not in any way ensure privacy or confidentiality of Commission and Council email communications.
- 9.3 Restricted or sensitive information (including the users' own information) is **never** to be sent through email regardless if the recipient is internal or external.

Contact the Privacy Officer or the Division of Policy and Planning for a secure method of transferring this type of information.

- 9.3.1 All incoming and outgoing email will be scanned for potential violation of data privacy policies. The Privacy Officer will review any violations and handle appropriately.
- 9.3.2 Users must immediately contact the privacy officer upon receiving or obtaining confidential information to which the user is not entitled.
- 9.4 Email is not to be used for the creation or distribution of any offensive or disruptive messages.
- 9.5 Users must never execute programs or open e-mail attachments that: (1) have not been requested; or (2) come from an unknown source. If in doubt users should contact the Senior IT Systems Administrator for assistance.
- 9.6 All users must guard against targeted phishing schemes that request sensitive information through deceptive emails that may appear to be sent from an internal email address. To assist in the prevention of such attempts, external emails will contain a banner at the top stating they are from an external source. Users should contact the Senior IT Systems Administrator if they have questions or concerns.
- 9.7 Users must follow proper protocol and guidelines when sending mass mailings or group messages.

## **10. Acceptable Use/Unacceptable Use**

Acceptable use encompasses behavior that is ethical, compliant, and shows restraint in the consumption of shared resources. It demonstrates respect for intellectual property, ownership of data, system security mechanisms, and individuals' rights to privacy and to freedom from intimidation and harassment.

- 10.1 User Responsibilities
  - 10.1.1 Users will only access files, data, and protected records if they are authorized to have the information, if they own the information, or if the information is publicly available.
  - 10.1.2 All users should conduct themselves as representatives of the Commission and Council and are responsible for becoming familiar with and abiding by all Commission and Council policies and procedures.
  - 10.1.3 Users must only use legal versions of copyrighted software and ensure compliance with vendor license requirements.
- 10.2 Unacceptable uses include, but are not limited to the following:
  - 10.2.1 Any use which is unlawful, violates local, state, or federal laws, unreasonably interferes with job performance or system operations, or that could be reasonably considered as disruptive to another's work.

- 10.2.2 Furnishing false or misleading information or identification in order to access another user's account
- 10.2.3 Dispersing data to individuals without authorization or through unauthorized methods.
- 10.2.4 Any use of IT resources for unethical purposes, including sexually explicit material, violence, gambling, racism, harassment, or any illegal activity. sexually explicit material.
- 10.2.5 Use of unlicensed software or the distribution of Commission and Council software that would violate license agreements.
- 10.2.6 Any use for promotion of political or religious positions or causes, commercial purposes, product advertisements, or “for-profit” personal activity.
- 10.2.7 Any use in relation to copyright infringement, placing wagers or bets, promoting the misuse of weapons or the use of devices associated with terrorist activities.
- 10.2.8 Any use in relation to participating in chain letters, solicitations, abusive correspondences, or forwarding or responding to SPAM.
- 10.2.9 Any use related to pyramid selling schemes, multi-marketing schemes, or fundraising for any purpose unless agency sanctioned.

## **11. Exceptions**

Exceptions to any part of this policy are rare and must be approved by the Executive Vice Chancellor of Administration for the Commission and Council or his/her designee, and formally documented. Policy exceptions will be reviewed on a periodic basis for appropriateness.

## **12. Enforcement**

Enforcement of this policy is the responsibility of the Executive Vice Chancellor of Administration for the Commission and Council or his/her designee.

Any user found to have violated this policy may be subject to disciplinary or corrective actions based upon the policies, rules, and procedures of Commission and Council. These actions may include sanctions including, but not limited to, revocation of privileges up to and including termination of employment. Certain violations, misuse, or disclosures of confidential information may include civil and/or criminal penalties.

## **13. Change Log History**

June 2019: Updated to align with data privacy and protection efforts; Added Change Log History;



**West Virginia Higher Education Policy Commission  
West Virginia Community and Technical College System**



**Information Security and Acceptable Use  
Acknowledgement Statement**

By signing this document I certify that I read, understand, and agree to abide by the Information Security and Acceptable Use Policy and all provisions within.

I understand and agree that if I violate any of the provisions of this policy, I may be subject to the actions set forth in the enforcement section of this policy.

Employee Name: \_\_\_\_\_ Division: \_\_\_\_\_

Title: \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date: \_\_\_\_\_

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### INFORMATION TECHNOLOGY PROCUREMENT POLICY AND PROCEDURE

#### **Purpose**

The purpose of this policy is to establish the procedures for the acquisition of computer hardware, software, and peripherals that are purchased by the West Virginia Higher Education Policy Commission (“Commission”), connect to the Commission’s network, and/or require support by the Commission’s Information Technology Office (ITO).

Please note that there are other requirements beyond those listed here that may apply to particular circumstances. Their omission from this policy and procedure is not an excuse for not meeting all requirements. *See generally*, Series 30, Procedural Rule, Purchasing, the Commission’s rule regarding Purchasing.

#### **Scope**

This policy and the procedures outlined herein are applicable to all employees of the Commission, including probationary, part-time, seasonal, and temporary employees. These guidelines cover the acquisition of computing hardware, computer software, peripherals, and software as a service. ITO will assist with procurement of services that help implement or evaluate software.

#### **Policy**

The Commission has standards in place for its computer hardware, software, operating systems, computer networks, and peripherals (i.e., printers, hard drives, adapters, mice, keyboards, etc.) (collectively, “IT resources”). This standardization is essential, as it allows the ITO to provide a quality service to the Commission’s users. The main benefits are:

- ITO is familiar with hardware, software, and peripherals, thus speeding up purchasing, troubleshooting, and response.
- ITO is able to stock standard spare equipment in order to reduce downtime.
- Network installations are planned and coordinated centrally by experienced network engineers.
- The Commission can recruit ITO staff with relevant knowledge and skills.

This policy outlines the procedures that allow the Commission to achieve these benefits and to ensure the purchase, delivery, and installation of IT equipment is coordinated successfully and purchased appropriately.

Acquiring any IT resource for the Commission will entail a contract or a license, with “license” commonly used for software and software as a service. Contracts or licenses may be the culmination of an original procurement process (e.g., standard bidding process, request for proposal or sole source), an approved purchase from an existing Statewide or Commission contract, or a P-Card purchase. If you do not have authority to enter into a contract or make

purchases on behalf of the Commission, you may be taking on personal liability for entering into a contract or making a purchase that has not been approved by the appropriate Cabinet-level manager. For example, free online software procured by clicking “I Agree” or its equivalent is a procurement most employees do not have the authority to make. Only the ITO and Cabinet-level managers have such authority.

## **Procedures**

Any request for the purchase or acquisition of any IT resource should be made in consultation with the ITO.

The ITO shall be involved in any software purchase if any of the following will occur:

1. The ITO’s assistance will be required to implement the software;
2. The software will require Commission credentials for authentication;
3. The software will be made generally available to Commission employees outside the requesting office or work unit;
4. Integration with other Commission systems is required; or
5. Ongoing support from the ITO is expected.

The ITO shall be involved in all hardware purchases, including:

1. Desktop or laptop computers;
2. Tablets;
3. The hardware will require Commission credentials for authentication;
4. The hardware will be made generally available to Commission employees outside the requesting office or work unit; or
5. Hardware that is permanently mounted or for which ongoing support from the ITO is expected.

Purchases of peripherals require involvement by the ITO if there is an expectation of future support. ITO involvement is always recommended to ensure device compatibility and best pricing.

The ITO generally does not support hardware or software that has been purchased without ITO involvement. Support for such systems would be best effort and only as time allows.



## **Standard Hardware or Software**

The purchase of any standard hardware shall be made only by the ITO, who shall comply with applicable State competitive bidding and purchasing requirements.

The purchase of any standard software or peripherals to be used by a particular office or work unit priced at \$1,000 or less may be made on that office's or work unit's P-Card only with the prior written approval of the appropriate Cabinet-level manager. The approval of such Cabinet-level manager shall constitute sufficient approval to process the P-Card transaction for payment. Before making any such purchase, the requesting employee or his or her Cabinet-level manager must check with the ITO to see if the requested software or its equivalent is already available under an existing Statewide or Commission contract. In addition, the requestor must complete the "Request for Software Subscription" Form attached to this policy.

The purchase of any standard software or peripherals to be used by the whole agency or priced at \$1,001 or more can only be made by the ITO.

## **Non-Standard Hardware or Software**

Any Commission employee requesting the purchase of non-standard hardware or software shall first request approval for such purchase from the Cabinet-level manager over his or her office or work unit. If the Cabinet-level manager agrees that such purchase is necessary for the efficient operation of the office or work unit, he or she shall forward such request to the ITO for approval.

The ITO shall determine whether the requested purchase is compatible with existing standards and equipment; its support requirements; and its suitability to the Commission's technology needs. If, after review, the ITO does not approve the proposed purchase, it may ask the requesting office or work unit to reconsider its request or suggest an alternative purchase.

If the ITO does not approve the non-standard purchase and the requesting office or work unit does not accept the proposed alternative, the requesting office or work unit may appeal the ITO's decision to the Executive Vice Chancellor for Administration or his or her designee. The Executive Vice Chancellor for Administration or his or her designee shall meet with the ITO, the Cabinet-level manager of the requesting office or work unit, and any other person deemed necessary to the decision to review the request and the ITO recommendation before making the final determination regarding the proposed purchase. The determination of the Executive Vice Chancellor for Administration shall be final.

## **Cloud Computing**

Data in "the cloud" exists in contrast to systems and services entirely within the control of the Commission and located on State-owned or State-leased property. Because of the sensitivity of much of the Commission's data, and the need for integrity in all of the Commission's data, any agreement, contract or license regarding the use of third-party cloud services requires inclusion of language substantially similar to that set forth in the West Virginia Chief Technology Office's Software as a Service Addendum:

<https://technology.wv.gov/SiteCollectionDocuments/Policies%20Issued%20by%20the%20CTO/2019/WV%20Cloud-SaaS%20Procurement%20Addendum%2011-1-19.pdf>. Any agreement, contract or license for the provision of third-party cloud services shall only be entered into by the ITO upon the prior written approval of the Executive Vice Chancellor for Administration.

### **Non-Compliance**

Computer hardware, software or peripherals not purchased in accordance with this policy shall not be paid for by Commission funds and shall not be connected to any device on the Commission network. Any device that is purchased and connected to the Commission network outside the provisions of this policy shall be removed from the affected computer(s) and/or the Commission's network. Non-compliance with this policy may result in disciplinary action, up to and including termination.

June 2020

REQUEST FOR SOFTWARE SUBSCRIPTION:

NAME OF REQUESTOR:

DIVISION:

NAME OF SOFTWARE USER:

POSITION:

SOFTWARE REQUESTED:

WEBSITE ADDRESS:

PRICE:

PAYMENT METHODOLOGY:

EXPLAIN HOW THIS SOFTWARE SUBSCRIPTION WILL BE USED:

I CERTIFY THAT NO PII OR STUDENT DATA WILL BE USED/COLLECTED BY USING THIS SOFTWARE SUBSCRIPTION. (INITIAL HERE )

I CERTIFY THAT THE VENDOR WILL NOT SIGN THE WV-96 AGREEMENT ADDENDUM. (IF CONTACT WAS BY PHONE, PLEASE NOTE VENDOR EMPLOYEE NAME, DATE AND TIME OF YOUR ATTEMPT TO HAVE THE WV-96 SIGNED. IF CONTACT WAS BY E-MAIL, ATTACH THE E-MAIL SHOWING THE REFUSAL. (INITIAL HERE )

PHONE CONTACT DETAIL INFORMATION:

WHAT WILL BE THE ADVERSE EFFECT TO YOU IF YOUR REQUEST IS DENIED?

APPROVED:

DENIED:

\_\_\_\_\_  
(Signature of the Information Technology Officer)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of the Vice Chancellor for Administration)

\_\_\_\_\_  
(Date)



# Higher Education Policy Commission and Community and Technical College System Privacy Management and Incident Response Plan



Approval/Effective Date:

Revised Date:

Questions or comments concerning this policy can be directed to Pam Woods ([pamela.woods@wvhepc.edu](mailto:pamela.woods@wvhepc.edu))

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## 1. Purpose

The purpose of this plan is to provide effective and appropriate response procedures to events and situations that may expose personally identifiable information (PII), student education records collected and maintained by the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Community and Technical College System (Council) to unauthorized individuals, both internally and externally.

The procedures in this plan are based on industry standards and adheres to state and federal privacy laws and regulations<sup>1</sup> and best practices recommended by the U.S. Department of Education's Student Privacy Policy Office (SPPO). This plan is reviewed annually or as circumstances dictate and revised as applicable.

## 2. Scope and Authority

This plan applies to all employees (paid and unpaid, full-time and part-time, technical and non-technical), vendors, contractors, researchers, and all other individuals acting as official agents of the Commission or Council. The plan encompasses all data and information collected and maintained, whether in electronic, paper, or other format and regardless of the collection and storage method.

The Executive Vice Chancellor of Administration for Commission and Council has appointed a Privacy Officer and named them as the designated authority to establish and maintain a system of data privacy and information security and protection. The privacy officer has the authority needed to make crucial decisions, delegate tasks, serve as a liaison between leaders and stakeholder groups, and provides relevant direction to manage and maintain privacy and deal with real and potential threats.

## 3. Definitions

It is vital for the elements and concepts associated with privacy and privacy incidents be consistent, understood, and evident. The following definitions are provided to describe terms and concepts used throughout this plan.

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<sup>1</sup> State and Federal privacy laws and regulations include but are not limited to the following: *W.V. Code §46A-2A et seq.*, [Family Educational Rights and Privacy Act \(FERPA\)](#), the [Higher Education Act of 1965 as revised in 2008 \(HEA\)](#), the [Gramm-Leach-Bliley Act \(GLB\)](#), and the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#)

Access means to view, print, download, copy, or otherwise retrieve data from a computer, computer system, or computer network.

Authorized Party refers to those individuals or organizations with consent to access information or with a legitimate interest in or need for access to PII and other records about individuals in order to perform appropriate tasks necessary for their jobs.

Consent in general, means permission from a parent/guardian, eligible student, or other responsible party to disclose information from official records to another party.

Data breach is any successful or confirmed incident in which personally identifiable information (PII), sensitive, confidential or protected data has been disclosed and/or accesses by an unauthorized individual or in an unauthorized fashion. Data breaches are a subcategory of privacy incidents.

Disclosure means to permit access to, release, transfer, or otherwise communicate personally identifiable information (PII) from a record to any party by any means, including electronic, written, or verbal.

An authorized disclosure refers to any disclosure of information about an individual for which that individual has given consent or that is permitted or required pursuant to federal or state regulation for legitimate purposes. These types of disclosures are made to authorized parties.

An unauthorized disclosure refers to any access to or disclosure of information about an individual that is not authorized or that is made to or by an unauthorized party. Unauthorized disclosures can be internal to the agency or institution, or to an external organization or party. They may be the result of personal negligence, system failures, or malicious acts.

Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

Personally Identifiable Information (PII) includes any information that by itself or in combination with other information, has the potential to directly determine or find the identity of an individual person and could be harmful to an individual if disclosed.<sup>2</sup>

- Social security number, state/federal issued personal identification number, or driver's license number;
- Banking or credit card numbers;
- Financial information including State and Federal tax information;
- Full name and personal address;
- Name of student's parent and other family members, or mother's maiden name;

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<sup>2</sup> See *Family Educational Rights and Privacy Act (FERPA) regulations*, [34 CFR §99.3](#), for a complete definition of PII specific to education data and for examples of education data elements that can be considered PII.

- Citizenship or immigration status;
- Health and medical information;
- Student grades, GPA, ACT or SAT scores;
- FAFSA or financial aid information;

Sensitive data is defined as data that if disclosed could result in a moderate level of risk. This includes data that is made available through open record requests or other formal or legal processes.

- Employment and training program data;
- Most data elements in State personnel records;
- State/federal contracts data;

Indirect PII is information, when linked or linkable could be used to identify an individual

- Date or place of birth;
- Business phone;
- Race/ethnicity;

Public information is characterized as being open to the public. Information that alone or in combination with other data can cannot be used by a reasonable person to identify an individual; furthermore, if disclosed or shared, it would result in little or no risk to the individual or agency.

- Directory information which includes information that is not generally considered to be harmful to an individual, or an invasion of privacy;
- Enrollment in an institution;
- Official honors and awards received;
- Participation in officially recognized sports;
- Agency public websites;
- Commission and Council policies and procedures;

A Privacy Incident is an attempted or successful effort to access, acquire, disclose, or use PII or other information without authorization (i.e., any potential or actual unauthorized disclosure) regardless of the format. Such events may expose PII or other information to parties that are not authorized to access the information or may involve the misuse of PII or other information for purposes other than those that are explicitly permitted.

A security breach refers to any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy and data or information.

Unauthorized Party refers to individuals or organizations without consent and without a legitimate interest in having access to PII and other records about individuals.

## 4. Examples

Privacy incidents, including data breaches, may be the result of accidents or negligence on the part of authorized individuals, failures of systems designed to store and protect information, or malicious acts intended to cause harm. These incidents can take many forms including (but not limited to) the following examples:

- Lost, stolen, unsecured, or temporary misplaced equipment, tablets, laptops, physical records, or other devices such as smart phones;
- Lost or stolen storage media, including flash drives, CDs/DVDs, external hard drives, SD cards, or other external storage that contains PII or other sensitive data;
- Improper storage or disposal of records, whether electronic or physical;
- Posting or exposure of student information on public facing websites, public formal or informal reports and publications, social media, or other public venue;
- Intentional or accidental transmission of student information to unauthorized parties regardless of the method;
- Sharing data without full authorization or through non-secure methods such as email, texting, or other non-secure methods;
- Sharing, posting, or otherwise not securing your passwords that allow access to PII or other sensitive information;
- Compromised computers or servers, such as times where a machine or network has been hacked or accessed by an unauthorized party;
- Receipt of student information that an individual is not entitled to;
- Use of student or employee information for purposes other than official institution or agency related business;
- Malware, computer viruses, or other malicious attacks that could compromise the security of a computer or network; and
- Violations of official security policies and procedures;

The Commission and Council's privacy management and incident response process is designed to protect against and respond swiftly to all privacy incidents; special care is indicated in responding to those incidents that are malicious in nature and those that are data breaches.

## 5. Roles and Responsibilities

Privacy management and data security is the responsibility of all employees, vendors, contractors, researchers, and all other individuals acting as official agents of the Commission or Council. Specific divisions and employees have heightened responsibilities to ensure appropriate data governance and to manage and respond to privacy incidents.

The general responsibilities for key staff involved in privacy incident response for the Commission and Council are outlined below.

### Commission and Council Privacy Officer

The privacy officer represents the Commission, the Council, West Virginia Network for Educational Telecomputing (WVNET), the public regional institutions, and the community

and technical colleges on the state privacy management team. The privacy officer is responsible for all privacy management and incident response efforts undertaken by the Commission and Council. The privacy officer may appoint a designee to lead the efforts if the situation is warranted.

### **State Level Incidents**

When a potential incident is discovered at the state level, the privacy officer is responsible for initiating the incident response plan, reporting the incident to the State Privacy Office if applicable, assigning an incident response team, and leading the efforts from the initial identification of the incident through the post-incident review of lessons learned.

The privacy officer will review the incident to determine potential criminal activity underlying the incident or whether there was systematic or willful noncompliance with state or federal policy concerning data security or student privacy. The privacy officer will review all evidence related to an incident, collect more as necessary, and determine whether additional action is necessary in addition to resolution of the incident (e.g., referral for further enforcement, or recommendations to pursue criminal prosecution, as in the case of malicious data breaches).

### **WVNET or Institutional Incidents**

For incidents discovered at WVNET or the institutional level, the Commission and Council privacy officer will work with WVNET or the institution to help direct and oversee the response and investigation efforts. The privacy officer will coordinate with WVNET or the institution to ensure that an adequate response effort is underway.

The WVNET or institutional representative will provide the privacy officer with regular updates about the progress of all privacy incident response efforts, serve as a liaison between the privacy officer and WVNET or institutional leadership as necessary, and ensure that all necessary documentation relating to the incident is produced, disseminated to relevant stakeholders, the privacy officer, and archived as appropriate. The privacy officer will work with WVNET or the institution to ensure that proper handling and closing of the incident occur.

For WVNET or institutional incidents best handled by a state-level response, the privacy officer will be responsible for initiating the incident response plan, providing resources, and leading the efforts from the initial identification of the incident through the post-incident review of lessons learned.

### **Data Stewards and Technical Governance Group**

Some members of the data steward and technical governance group serve as experts for data security, confidentiality, and privacy. When appropriate, certain members of this group may assist the privacy officer in leading and coordinating responses for certain incidents.



## **Incident Response Team**

The incident response team supports the privacy officer by assisting with in assessing and classifying the incident, determining the appropriate immediate response, and managing all other aspects of response and mitigation, up to and including a post-incident review and recommendations for changes in policy or practice to prevent similar incidents in the future.

The size and composition of the team will vary based on the circumstances of the specific privacy incidents they will manage. The team will consist primarily of Commission and Council employees, and other identified staff, as appropriate.

When needed, the privacy officer may request external state agencies to participate on the response team to provide additional depth of knowledge or expertise and breadth of experience to the containment, investigation, and resolution process.

The Commission and Council's legal counsel will be an ex officio member of all incident response teams formed at the state-level; the privacy officer will be an ex officio member of incident response teams formed at WVNET or the institutional level as applicable.

## **Senior IT Systems Administrator**

When warranted, the privacy officer may request assistance from the Commission's Senior IT Systems Administrator in the incident response process to examine the risk and magnitude of harm to internal systems due to the privacy incident. The IT systems administrator also assists with systems and network reviews and forensics. If warranted the privacy officer will recommend the use of forensics services offered by the state privacy office through as part of BRIM insurance.

## **Official Communications**

Given the likelihood that some privacy incidents, particularly those that are data breaches, may require notification of the affected parties and/or the general public, the Executive Vice Chancellor of Administration for Commission and Council and the Director of Communications will be involved in the privacy incident response process when warranted.

At a minimum, the Chancellor(s) and the Executive Vice Chancellor of Administration for Commission and Council will be kept informed of the key facts of all major incidents and the progress of the response efforts so that he or she may accurately respond to or refer questions from news media.

When notification of students, or other individuals is required due to the nature or scope of a data breach, the privacy officer will relate the details to the Chancellor(s), the Executive Vice Chancellor of Administration for Commission and Council, the Director of Communications and the Commission and Council legal staff so they can collaborate and provide support and assistance in creating appropriate letters and other messages explaining the incident and next steps families may need to take.

## Data Governance Representatives

Staff and stakeholders who serve in various capacities within the Commission and Council data governance structure will be informed of all privacy incidents and data breaches as applicable. They may be asked to serve on incident response teams or to provide guidance for appropriate and effective mitigation of threats and potential systemic weaknesses.

## Local Law Enforcement

Local law enforcement officials may need to be involved in investigations and prosecutions, depending on the circumstances of the individual incident. If computers, storage media, or other equipment are stolen, the individual from whom they were taken will need to file a police report. If the circumstances surrounding an incident or data breach warrant criminal prosecution, county prosecutors will need to bring appropriate charges in court.

## State and Federal Offices

If warranted, other state and/or federal officials may need to be consulted or notified about data breaches involving electronic student records or systematic noncompliance with state or federal law. Depending on the nature and circumstances of the incident, offices to be consulted may include the WV Auditor's Office, the WV State Privacy Office, the U.S. Department of Education (USED), the Federal Bureau of Investigations (FBI), or the U.S. Computer Emergency Readiness Team (US-CERT) at the Department of Homeland Security.

The Commission and Council reserves the right to involve any other state or federal offices or officials it deems necessary to adequately investigate, litigate, or resolve any privacy incident. Other stakeholders may be involved in the response process depending on the specific circumstances of any given privacy incident and kept informed of progress toward full resolution via regular updates.

In the case of privacy incidents or data breaches involving the Statewide Longitudinal Educational Database, all partner agencies will be notified and kept informed of progress toward full resolution. The privacy officer will develop annual reports about the privacy-related activities of the Commission and Council, including privacy incidents handled during the year.

## 6. Incident Classification

All incidents are classified into levels depending upon the type of unauthorized disclosure and the nature of the information disclosed. Depending on the incident, it is possible that it may not fit into one of the classification levels. The privacy officer will determine the proper classification.

**Level 1** – level 1 incidents include unauthorized internal disclosures of or access to data and information that does not include any sensitive PII about the individual(s) whose records were disclosed.

These incidents may be referred to the appropriate division head by the privacy officer for management and response. If this is the case, the privacy officer will

provide suggestions and resources to assist with training or education to prevent similar incidents in the future.

**Level 1-A** – level 1-A incidents include authorized disclosure of data and information that may or may not include sensitive PII about individual(s) but was transmitted in an unauthorized manner (Ex. Sending PII via email).

**Level 2** – level 2 incidents include unauthorized internal disclosures of or access to data and information that does include sensitive PII about the individual(s) and unauthorized external disclosures of or access to PII that does not include any sensitive PII.

**Level 3** – level 3 incidents involve unauthorized external disclosures of or access to data and information that does include sensitive PII about individual(s). Unauthorized disclosure of or access to any data and information containing sensitive PII is considered a data breach, regardless of whether the disclosure was internal or external.

All level 3 incidents will be immediately reported to the office of the state privacy office, the Chancellor(s), the Executive Vice Chancellor of Administration for Commission and Council, and the data governance implementation team.

All incidents, regardless of classification level, must immediately be reported in accordance with the procedures described below in the incident reporting section.

## **7. Incident Reporting**

Privacy incidents are discoverable through many mechanisms such as routine network monitoring, suspicious activity found during database activity monitoring, security audits, loss or theft of equipment, or failure to comply with policies and procedures. It is possible for anyone to find or suspect that an incident has occurred.

It is vital that all suspected incidents be investigated. It is the responsibility of all employees, contractors, vendors, researchers, authorized representatives, other agents, and/or stakeholders to report any suspected or confirmed privacy incidents to the privacy officer for immediate investigation and handling.

Incident reports should, to the extent possible, use established forms (see Appendix A) and shall include as much information as possible. At minimum, they must include the following.

- Location the incident occurred
- Date the incident occurred (if known) and the date the incident was discovered
- Description and list of the specific information disclosed, including database field names if appropriate
- Number of individuals whose information was affected or disclosed
- How the incident happened and indicate if the incident was intentional or the result of an accident/negligence
- How the incident was discovered

- Name of who reported the incident and if appropriate, the name and title or role of the individual who disclosed the information
- Description or list of the person/people to whom the information was disclosed
- What steps or actions, if any, have been taken to repair or correct the issue
- Detailed description of the incident, and any other information that may be relevant.

All incidents—whether suspected or confirmed—must be reported to the privacy officer. When employees, contractors, vendors, researchers, authorized representatives, other agents or stakeholders discover an incident, the Commission and Council privacy officer should be notified as quickly as possible but **absolutely no later** than 24 hours following the discovery.

## **8. Response Procedures**

The following response procedures may not always happen in a linear process as described and situations may require additional steps, multiple steps occurring simultaneously, or other deviations from the steps listed. This is to be expected based on the nature of the incidents.

All incidents will be fully investigated, and all evidence relating to the incident must be preserved and/or archived for future investigation in accordance with best practices. Technology staff will be consulted to ensure appropriate preservation of electronic evidence. When a privacy incident involves out-of-state individuals, additional investigation may be required, and that state’s breach and notification policy reviewed.

## **9. Detect and Identify**

Upon receiving an incident report, the privacy officer will determine if an incident has occurred or if it can be considered a non-incident. If an incident has been determined to have occurred, the privacy officer will implement the incident response process, review the initial report and information, ask follow-up questions, and make a preliminary assessment as to the severity and classification of the incident.

The privacy officer will inform the incident response team members and report the privacy incident to the State privacy office when applicable. The privacy officer may also inform appropriate agency leaders or other officials to alert them to the incident and the initiation of a formal response when applicable.

### **Evidence Collection and Documentation**

A formal incident log will be established to document the incident, its causes, the response, and potential steps for future prevention and/or deterrence efforts. The log must be updated regularly throughout the response process (i.e., each time a meeting is held, or decision is made) and must be sufficiently detailed to allow for use in similar incidents.

The privacy officer may consult the Commission and Council general counsel if applicable, to determine appropriate strategies and procedures for collecting, handling, storing, and documenting the custody of any evidence that may need to be collected throughout the

response and investigation, particularly if the evidence may become part of a criminal prosecution.

## **10. Contain and Recover**

Following determination of a level 1-A, 2 or 3 incidents, the incident response team will assemble per the privacy officers' direction to begin reviewing available information and devising an appropriate strategy for containment and response.

The composition of teams will vary based on the nature and severity of the incident and may include, as needed, experts in other areas such as data governance, technology, communications, human resources, and legal issues.

As the team is assembling and beginning to review information, the privacy officer will supervise efforts to contain the incident and recover any exposed PII. If steps have already been taken to contain the incident and retrieve the information, all efforts should be documented.

If containment and PII retrieval efforts have not yet been started, the privacy officer will direct and document that work immediately. This includes determining and assessing the most appropriate course of action to contain the incident and mitigate risks. The course of action shall be designed to (1) contain the incident, particularly those of an ongoing nature; (2) stop or limit further data loss or exposure; and (3) mitigate potential adverse effects for all those affected.

As part of assessing the appropriate course of action, the potential benefits and risks associated with the proposed actions, including whether any action may introduce additional vulnerabilities or pose political risks should also be assessed.

Documentation will include evidence or statements of belief about whether the exposed PII will be misused or further disseminated. All individuals who will be responsible for implementing any part of the plan will be provided with the full plan to ensure a comprehensive understanding of how their responsibilities are related to or associated with other steps or components of the process.

## **11. Investigate**

During the contain and recover process, the incident response team will review all available information about the incident, including its potential causes and impacts. The team will determine the immediate cause and explore potential related vulnerabilities or threats. Assistance from subject matter experts should be sought as needed.

As necessary, the incident response team may gather additional information in order to document the incident more completely. Such efforts may include additional requests for documentation or evidence; interviews with subject matter experts, key personnel, or others with knowledge of the incident, and other reasonable and necessary steps. It is vital that the gathering of additional information should not prevent or delay action.

Given the available information about the cause of the incident and the nature and extent of the exposed information, the incident response team will analyze possible risks to affected

individuals, data systems, equipment, institutions, and other external agencies. The team will then reassess the severity and scope of incident given all available information and the assessment of risk.

The incident response team, working with other staff members with knowledge of the incident, will prepare a complete inventory of the data exposed during the incident or data breach. To the extent possible, a complete list of the individuals whose information was disclosed should be created. This list should include as much contact information as possible.

### **Identify Related Threats or Vulnerabilities**

Throughout the investigation, the team should work to identify any other potential threats or vulnerabilities to the system, the data, or any processes used to enter, store, manage, or extract information.

The incident response team should remain mindful that threats or vulnerabilities could include inadequate awareness or training among staff, insufficient security procedures, insufficient capacity for comprehensive security, limited resources, and other factors.

### **Initial Briefing Report**

The incident response team will prepare and submit an initial briefing to the privacy officer regarding the nature and scope of the incident and the preliminary identified risks.

### **Update and Advise**

Situational status updates will be provided to the privacy officer who will keep key personnel at the appropriate levels abreast of the status. The frequency with which updates are provided may vary based on the level of the incident as well as its scope and potential for negative publicity and/or political ramifications.

The privacy officer will engage division heads, including legal representatives, in discussions about necessary processes if criminal activity is suspected and law enforcement involvement may be warranted.

The privacy officer will advise all other staff aware of the incident to keep all details in confidence until notified otherwise.

### **Preserve Evidence and Update Documentation**

The privacy officer will ensure that the incident log/record is fully updated throughout the response process. Other relevant documents (e.g., emails, reports) will be collected and preserved appropriately and in accordance with established protocol.

In cases involving breaches of electronic systems, the privacy officer will consult directly with agency technology experts to determine appropriate ways to capture and preserve information about the systems at the time the compromise was discovered.

## **12. Communicate**

The privacy officer will ensure that all relevant employees, stakeholders, and leaders have been fully informed about incident and briefed on the ongoing investigation and response efforts.

For level 1-A, 2, and 3 incidents the privacy officer will report the incident to the state privacy office and ensure that the Executive Vice Chancellor of Administration for Commission and Council and the Director of Communications are fully aware of all pertinent facts and able to answer questions from members of the media, should the need arise.

As needed, the Director of Communications should review the communications plan with the privacy officer and Executive Vice Chancellor of Administration for Commission and Council to prepare for managing public notification and media inquiries.

### **Determine Notification Needs**

For Level 1-A and 2 incidents, the privacy officer will determine whether notification of affected individuals is required. For Level 3 incidents, which involve the external disclosure of sensitive PII, notification of affected individuals is often required. Final notification determination is dependent on many factors including state or county residence.

The privacy officer will collaborate with the State privacy office, the Executive Vice Chancellor of Administration for Commission and Council and the Director of Communications to determine appropriate notification methods and message content based on the incident type, scope, and severity and the stakeholder group affected.

It is possible that some affected individuals may not be directly reachable, therefore plans must include reasonable methods for providing information for these individuals.

It will be determined whether a toll-free number and/or incident-specific email address is needed to assist with communication and notification efforts. The possibility of hosting an incident-specific informational website, if the scope and severity of the incident warrant such a resource will also be considered. Incident type specific templates may be developed and made available for phone calls, email messages, letters, presentations (e.g., PowerPoint), and informational websites.

Based on information gathered during the initial stages of the response, the team will develop a contact list for individuals directly affected by the incident (i.e., individuals whose information was exposed). At this step, the team will work to confirm the accuracy of the available contact information.

### **Notify Affected Stakeholders**

When notification is required, affected individuals must be notified about the incident as soon as possible and as is required by state breach laws. Normally this will be no longer than 10 calendar days after the incident is discovered and the identities of affected individuals are determined.

The privacy officer will consult State or federal resources to determine notification requirements. In general, notifications must provide as much information about the incident as is reasonable, including what happened, the likely cause, what staff are doing to resolve the issue, and how the incident may affect the individual being notified. Notifications should also describe any steps or actions affected individuals may need to take to proactively protect or monitor their identity and personal records.

Press releases, press conferences, media advisories, and any other mass communication efforts should, to the extent possible, be timed to coincide with or follow notification of individuals. Circumstances may dictate different priorities and shorter timelines; guidance from the State privacy office should be followed in planning all mass communications. The Executive Vice Chancellor of Administration for Commission and Council and the Director of Communications should serve as the key representative for all comments to the public or the media.

### **Report to Key Leaders and Other Officials**

All notifications that are required to be provided to the governor, other governmental officials, or other external stakeholders should be concise while providing sufficiently descriptive information about the incident, including the cause(s), the scope and severity, number of individuals affected, and the work being done to respond to the incident and mitigate potential harms.

The privacy officer will provide regular updates or reports for key internal leaders and stakeholders (e.g., administrators, technology personnel, staff who may have been the victims of equipment theft or hacking) to keep them fully informed of the incident and progress toward resolution.

As needed, and in consultation with the privacy officer, the State privacy office, Commission and Council leadership, and general counsel the team will determine whether federal officials need to be notified of the incident. Federal officials may include the Family Policy Compliance Office (FPCO) at the U.S. Department of Education; the United States Computer Emergency Readiness Team (US-CERT) at the Department of Homeland Security; the Federal Bureau of Investigations (FBI), or other federal offices or officials.

If warranted, law enforcement officials (to include police and local prosecuting attorneys) will be contacted to assist with the response to any incidents involving hacking or malicious attacks and all incidents involving the loss or theft of equipment.

Police reports are needed for all cases involving the theft of equipment or other resources and materials containing PII.

### **Communicate with the Public**

If the incident is widespread, has potential high visibility, may have political ramifications, or involves particularly sensitive data, the privacy officer will present available information to the Chancellor(s), Executive Vice Chancellor of Administration for Commission and Council,



and the Director of Communications to determine whether public notification or reporting is needed.

As needed, the Commission and Council will communicate broadly with the public about the incident. The communication team should enact a pre-established crisis communication plan to avoid confusion, distribution of misinformation, or other preventable mistakes in the midst of the response.

The Chancellor(s), the Executive Vice Chancellor of Administration for Commission and Council, and the Director of Communications should lead all efforts in communicating with the public. Other representatives or spokespeople for the Commission and Council should follow all guidance from the Executive Vice Chancellor of Administration for Commission and Council relating to communicating with external audiences.

### **Preserve Evidence and Update Documentation**

The privacy officer will ensure that the incident log/record is fully updated throughout the reporting process. Other relevant documents (e.g., emails, reports, notifications) will be collected and preserved appropriately and in accordance with established protocol.

All notifications (including copies of letters, emails, or phone scripts; websites created for the incident; etc.) will be archived for future reference. The privacy officer will ensure that all evidence is collected and preserved appropriately and in accordance with established protocol.

### **13. Review and Repair**

The privacy officer and the incident response team will now conduct a full review of the investigation and of the incident. The privacy officer and the incident response team will determine whether an internal review (conducted by internal staff) is appropriate or whether an external/third-party review is warranted. Different types of incidents may require different types of reviews based on causes, scope or severity, and potential political or public relations implications.

The incident response team should examine and document any lapses between the actual occurrence and the discovery of the incident as well as the time from incident discovery to reporting to the privacy officer. Throughout the investigation, the team should continue documenting and preserving evidence according to established protocol and/or instructions from the privacy officer or legal counsel.

The team should review and assess the effectiveness of initial response efforts. Any preliminary strengths and weaknesses in the response should be fully explored and documented.

The incident response team should review and assess the potential threats or vulnerabilities to the system, the data, or any processes used to enter, store, manage, or extract information that was found through the investigation and document these.

To the extent possible, the team should classify threats or vulnerabilities as high- or low-priority based on their severity and the likelihood that they may result in future privacy incidents.

### **Develop and Implement Plan for Repairs**

In addition to the immediate response processes that were undertaken, the incident response team should develop a plan (or set of plans) to make comprehensive repairs or corrections to the systems or processes that contributed to the incident. The team should also plan for corrections to any related vulnerabilities identified through the investigation.

The team may collaborate with subject matter experts to develop appropriate, comprehensive, and responsive plans. Plans for repairs (or components of those plans) should be prioritized based on the severity of the threats and the likelihood that future incidents may arise as a result of the vulnerabilities.

The team should develop short-term and long-term timelines to make updates or corrections for factors that may not be immediate threats but that could present risks in the future.

The privacy officer will collaborate with administrators or other leaders to ensure that immediate action is taken to repair system vulnerabilities or security lapses identified as high-priority or likely to result in future incidents.

Repair plans should be implemented by appropriately qualified staff or contractors. The privacy officer will be provided with updates about the progress of repairs on an ongoing basis until all repairs are successfully completed.

### **Determine Appropriate Sanctions**

If appropriate (and in accordance with state, federal, and other relevant policies and procedures), the privacy officer will collaborate with legal counsel to determine what appropriate sanctions or penalties might be for individuals, agencies, or other agents (e.g., contractors, vendors) who caused or substantially contributed to the cause of the incident.

In consultation with legal counsel, the privacy officer, and Commission and Council leadership should discuss and determine whether any civil action against individuals, agencies, or other agents may be appropriate or warranted.

The incident response team, administrators, and staff who were directly involved with an incident should cooperate and collaborate with law enforcement and local prosecutors as warranted in any criminal investigations (e.g., for theft of equipment, electronic hacking or other malicious attacks).

Criminal prosecution may be warranted in cases of malicious attacks or theft of property. Such determinations will be the exclusive purview of local prosecuting attorneys.

The incident response team, in consultation with the privacy officer, legal counsel, and appropriate Commission and Council leadership, should discuss and determine whether a formal complaint should be filed with the FPCO for any violations of FERPA by individuals, agencies, or other agents.

All repair plans should be distributed to appropriate internal staff for documentation and prioritization of work efforts. The privacy officer will ensure that the incident log/record is fully updated throughout the repair process. Other relevant documents (e.g., emails, reports, plans, work orders) will be collected and preserved appropriately and in accordance with established protocol.

## **14. Recover**

### **Verify Success of Repair Efforts**

The privacy officer will work to confirm and document that all repair efforts have been successful. Confirmation may include checks of electronic systems to ensure they are fully functional and verification that new procedures or processes work as intended. Staff should reestablish all operations after making necessary repairs to systems and processes.

The privacy officer will verify that individuals have received appropriate training and/or reminders of their responsibilities concerning PII and personal records. As necessary and warranted, the privacy officer may ask staff to provide formal assurances of compliance or improved conduct in the future.

The privacy officer will provide all affected and involved stakeholders with an update to report that the incident has been successfully resolved. As necessary, a summary of actions to date may be included as part of that notification.

If warranted, the privacy officer or other designated staff member should follow up with individuals whose information was inappropriately disclosed to determine whether they have any lasting needs or concerns resulting from the incident. The team should collaborate with those stakeholders to develop an appropriate plan to address those needs or concerns.

### **Follow Through with Sanctions**

At this time, appropriate personnel should levy any sanctions or penalties deemed appropriate. The person responsible for this task will vary depending on the nature or the sanction and the individual or entity against whom it will be levied. The team should determine who that person should be.

Any other actions determined to be appropriate (e.g., filing complaints with the FPCO, pursuing criminal or civil action through the courts) should be implemented. A staff member should be designated to follow up on these actions and provide ongoing reports to the team and relevant administrators until a final resolution is reached.

The privacy officer will ensure that the incident log/record is fully updated throughout the recovery process. Other relevant documents (e.g., emails, reports) will be collected and preserved appropriately and in accordance with established protocol.

## **15. Access and Learn**

It is vital that all lessons learned are appropriately shared and documented. This will help in the prevention of future privacy incidents and with future incident response plan trainings. These lessons will also help to update preparedness activities.

### **Debrief Incident (Causes, Identification, and Response)**

The privacy officer will convene the full incident response team to review the incident and all actions taken in response. The team will assess the effectiveness of the response effort. Strengths and weaknesses will be fully documented.

The team will detail and document the lessons learned from both the incident itself and from the response effort. These lessons learned will be included with the incident documentation and be used in the next incident response training if applicable. The team will develop recommendations to assist with future incident prevention and response efforts.

### **Review and Revise Policies, Procedures, and Practices**

The privacy officer and the incident response team will review existing policies, procedures, plans, and practices in light of lessons learned. The team will recommend any necessary changes and/or new policies, procedures, plans, and practices to improve security or better ensure privacy.

Proposed changes in Commission or Council policy and procedures will be developed, reviewed, and approved through the standard policy revision process. Based on lessons learned, there may also be recommendations to change, add, or otherwise modify the current incident response processes to improve response to future incidents.

### **Share Lessons Learned with Stakeholders**

The privacy officer will lead the incident response team in sharing lessons learned from the incident and the response process with other stakeholders. Such stakeholders may include personnel within the Commission and Council, other state agencies, and public higher education institutions.

If new tools or resources are developed as a result of the incident response, those tools or resources should be shared broadly with all Commission and Council divisions.

### **Provide Training and Support**

As warranted, the privacy officer will coordinate with other staff to ensure that training materials and resources for the processes or systems affected by repairs are updated appropriately.

Training materials and resources pertaining to any policies, procedures, or practices related to the cause of the incident will also be reviewed and updated as needed in light of lessons learned.

The privacy officer will provide training and support for all divisions and employees as well as other official agents as changes are implemented and made following incident response. The privacy officer will communicate on an on-going basis with stakeholders regarding new or revised policies, plans, procedures, and processes.

As needed, the privacy officer will provide reminders about existing policies, plans, procedures, and processes that may be related to the incident (e.g., policies that were not followed correctly) or that are identified as potential risks or vulnerabilities.

## Update and Archive Documentation

The privacy officer will ensure that all incident documentation is complete, up-to-date, and inclusive of all necessary components, including

- Causes of the incident
- How the incident was discovered
- Findings of the full investigation
- Actions taken to repair the incident (including dates/times and names of actors)
- Current system status if applicable (post-repair and recovery)
- Other relevant information (including whether legal action was pursued)
- Names of the incident response team members

The incident response team will create a concise summary of the incident from identification through resolution and lessons learned, and a formal summary of lessons learned and recommendations for the future. These documents will be given to the privacy officer for appropriate distribution.

All documentation and records must be archived according to established protocol.

## **16. Enforcement**

Commission and Council employees found to have violated these guidelines or any other privacy-related procedures or regulations may be subject to disciplinary or corrective actions, including, but not limited to, revocation of privileges up to and including termination of employment. Certain violations, misuse, or disclosures of confidential information may include civil and/or criminal penalties.

Contractors, vendors, researchers, and other agents working for or on behalf of the Commission and Council who are found to have violated these guidelines or any other privacy-related procedures or regulations will be subject to reprimands and action commensurate with the violation, including termination of contracts or pursuit of other legal action.

## Appendix A

### **Commission and Council Incident Report**

Please complete the following form with as much detail as possible. **DO NOT** include actual personally identifiable information (PII) in this form.

Return completed form to Pam Woods, [pamela.woods@wvhepc.edu](mailto:pamela.woods@wvhepc.edu)

Name: <small>(Name of Person Completing Form)</small>		Date: <small>(Date form completed)</small>	
Location of incident:		Date incident occurred:	
Please briefly describe the incident:			
Please list the specific <b>type</b> of information disclosed below. Include database field if appropriate. <i>(DO NOT list actual data that was disclosed here)</i>			
Number of individuals whose information was disclosed:		Number of individuals who received disclosed information <i>(if known)</i> :	
Describe how the incident occurred below. Include if the incident was intentional or the result of an accident/negligence:			
How was the incident discovered?			
Name of individual who disclosed the information <i>(if known)</i> :			
Division of individual who disclosed the information <i>(if known)</i> :			
List individual(s) to whom the information was disclosed:			
Please list the steps (if any) that have been taken to repair or correct the issue below.			
Please give a detailed description of the incident and include any other information that may be relevant to the investigation below.			

## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### REMOTE ACCESS TO AGENCY NETWORK

#### **Objective**

Network and system security are extremely important to agency data protection responsibilities and generally are enforced in part by effectively eliminating external access to internal resources. However, complete remote access sometimes is necessary for employees or designated third-parties. This document establishes the appropriate guidelines for granting such access while also protecting the agency's critical systems and data.

#### **Scope**

This policy and related procedures apply to employees of the West Virginia Higher Education Policy Commission and authorized third parties who require the use of and are granted access to the agency's local area network (LAN). Access for specifically-defined ingress traffic, such as communication between email servers or inbound Web traffic, are not in scope.

#### **Roles and Responsibilities**

##### ***Supervisors / Managers***

Individuals with administrative oversight responsibilities must ensure that their employees complete an appropriate request form, that they have a justified business reason for the access, and that they do not abuse this privilege.

##### ***IT Staff***

Information Technology (IT) staff members must ensure that no remote access is granted until the proper request form is completed and approved. All access must be reviewed regularly and any access no longer needed should be disabled. IT staff granted remote access is to use this privilege only for business purposes. IT staff must develop appropriate procedures and request forms to ensure that the requirements of this policy are observed.

##### ***Users***

Users who require remote access for tasks directly related to job responsibilities shall complete a request form, obtain the appropriate signatures, and return the form to IT. They also must notify IT once this access is no longer needed.

#### **Policy**

##### ***Access Authorization***

Remote access to the agency's LAN is granted after completion and approval of a Remote Access Request Form. No access should be provided without this authorization. Documentation of authorization is retained indefinitely and active authorizations are reviewed annually.

### ***Account Expiration***

Accounts inactive for more than six (6) months will be deactivated. Accounts may be reactivated without completion of a new Remote Access Request Form by contacting IT staff if within one year of completion of Remote Access Request Form and still within the authorized date range.

### ***Network Access***

All external access must pass through a corporate firewall and use an industry standard encryption scheme. Virtual Private Networking (VPN) client software is provided and supported by the IT staff. For more-permanent connections, the remote end of the VPN tunnel may be terminated on another firewall or VPN concentrator. Such tunnels are handled as a network change request.

All computers used to remotely access the agency network must have up-to-date and functioning anti-virus software. All personal computers must utilize a firewall.

### ***Remote Access for Employees***

Employees must have a legitimate business reason, approved by their supervisor, before remote access is granted. It is preferred that access be limited to agency computers but access from a personal computer may be approved with an appropriate explanation for the exception.

### ***Remote Access for Third Parties***

Contractors, auditors, and other third parties must have a legitimate business reason, approved by management in the appropriate business unit, before remote access is granted. The request must include a date at which access will be revoked. Third party network users must sign an acceptable user policy that covers non-disclosure of information and appropriate use of the systems.

Effective: January 2018



## **SOCIAL MEDIA POLICY**

### **Purpose**

Social media is a powerful communication tool that has a significant impact on organizational and professional reputations. As an employee of the West Virginia Higher Education Policy Commission (Commission) or the West Virginia Community and Technical College System (Council), sometimes the line between your own online, personal voice and one that represents the agency can become blurred. This policy is designed to help clarify how best to enhance and protect personal and professional reputations when participating in social media.

Both in professional and agency roles, employees should follow the same behavioral standards online as they would in real life. The same laws, professional expectations, and guidelines for interacting with customers, vendors, the public, media and other constituents apply online as they do in person or through traditional media. Employees are liable for material or statements they post or repost to social media sites. As employees of the Commission or Council and the State of West Virginia, you are subject to the policy and rules that follow.

### **Scope**

This policy applies to all employees of the Commission or Council.

### **Core Tenets**

“Social media” means any facility for online publication and commentary, including but not limited to blogs, wikis, and social networking sites such as Facebook, LinkedIn, Twitter, Flickr, Instagram, TikTok and YouTube.

“Improper use of social media” means making a communication through social media that:

1. Directly incites violence or other immediate breach of peace;
2. When made pursuant to (i.e. in furtherance of) the employee’s official duties, is contrary to the best interests of the Commission or Council, or the State of West Virginia;
3. Discloses without authority any confidential student information, protected health care information, personnel records, personal financial information, or confidential research data; or
4. Subject to the balancing analysis required by the following paragraph, impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the author’s official duties, interferes with the regular operation of Commission or Council, or otherwise adversely affects Commission or Council’s ability to efficiently provide services.

## **Requirements for all Social Media sites, including personal sites**

### Protect Confidential and Proprietary Information

Do not post confidential or proprietary information about Commission or Council institutions, employees, or other constituents. Employees must follow the applicable federal requirements (such as FERPA), as well as any additional relevant guidelines and requirements. Adhere to all applicable privacy and confidentiality policies.

### Your Personal Account is to Express only Your Personal Opinions

Never represent yourself as a spokesperson for Commission or Council, or the State of West Virginia. These entities should never be the subject of the content you are creating. Be clear and open about the fact that your views do not represent those of your employer, fellow employees, customers, or vendors. It is best to include a disclaimer such as “The postings on this site are my own and do not necessarily reflect the views of my employer, co-workers, or the customers and vendors that I serve through my employment.”

It is important to understand there may be occasion where it would be appropriate and, in fact, encouraged for you to share information about projects the Commission or Council are promoting through social media, such as scholarship application deadlines, college awareness events, etc. Employees would not be required to share this information through their personal social media accounts but, when appropriate, may do so. Employees are not prohibited from sharing agency social media postings as long as the context within which it is shared does not violate the “Improper use of social media” guidelines above.

### Respect Copyright and Fair Use

When posting, adhere to all copyright and fair use laws, and be mindful of the intellectual property rights of others.

### Do Not Use Logos for Endorsements

Outside of sharing (Retweeting, reposting, etc.), do not use Commission or Council logotypes for your personal social media identification. Do not use the Commission or Council name to promote a product, cause, political party, political position, or candidate.

### Respect Commission or Council Time and Property

Commission or Council computers and time on the job are reserved for state-related business as approved by management and in accordance with Commission or Council policies and procedures. Be mindful that personal social media posts during scheduled working hours should be avoided and limited to times when you are not “on the clock.”

### Terms of Service

Obey the Terms of Service of any social media platform employed.

### **Best Practices**

This section applies to those posting on behalf of the Commission or Council, although the guidelines may be helpful for anyone posting on social media in any capacity.

### Think Twice Before Posting

Privacy does not exist in the world of social media. Consider what could happen if a post becomes widely known and how that may reflect both on the poster and the organization. Search engines can turn up posts years after they are created, screenshots can retain posts after they have been deleted, and comments can be forwarded or copied. If you would not say it publicly at a conference or to a member of the media, consider whether you should post it online. If you are unsure about posting something or responding to a comment, ask your supervisor or manager for guidance.

### Strive for Accuracy

Get the facts straight before posting them on social media. Review content for grammatical and spelling errors. This is especially important if posting on behalf of Commission or Council in any capacity.

### Be Respectful

Understand that content contributed to a social media site could encourage comments or discussion of opposing ideas. Responses should be considered carefully in light of how they would reflect on the poster and/or the organization and its institutional voice.

### Remember Your Audience

Be aware that a presence in the social media world is or easily can be made available to the public at large. This includes prospective students, their parents, current students, institution faculty and staff, legislators, employees, and the general public. Consider this before publishing to ensure the post will not alienate, harm, or provoke any of these groups.

### Photography

Photographs posted on social media sites easily can be appropriated by visitors. Consider adding a watermark and/or posting images at 72 dpi and approximately 800x600 resolution to protect your intellectual property. Images at that size are sufficient for viewing on the Web, but not suitable for printing.

### **Enforcement**

Commission or Council division directors, vice chancellors and chancellor(s) have the authority to discipline any employee who makes improper use of social media in violation of agency guidelines, up to and including termination.

In determining whether the employee's communication constitutes an improper use of social media, the employee's supervisor in conjunction with the division director or vice chancellor, shall balance the interest of Commission or Council in promoting the efficiency of the public services it performs through its employees against the employee's right as a citizen to speak on matters of public concern. The supervisor and department director or vice chancellor may consider the employee's position within the organization and whether the employee created the appearance of the communication being endorsed, approved or connected to Commission or Council in a manner that discredits the agency. The supervisor and division director or vice chancellor may also consider whether the communication was transmitted utilizing Commission or Council software, systems, equipment or network.

REQUEST FOR SOFTWARE SUBSCRIPTION:

NAME OF REQUESTOR:

DIVISION:

NAME OF SOFTWARE USER:

POSITION:

SOFTWARE REQUESTED:

WEBSITE ADDRESS:

PRICE:

PAYMENT METHODOLOGY:

EXPLAIN HOW THIS SOFTWARE SUBSCRIPTION WILL BE USED:

I CERTIFY THAT NO PII OR STUDENT DATA WILL BE USED/COLLECTED BY USING THIS SOFTWARE SUBSCRIPTION. (INITIAL HERE )

I CERTIFY THAT THE VENDOR WILL NOT SIGN THE WV-96 AGREEMENT ADDENDUM. (IF CONTACT WAS BY PHONE, PLEASE NOTE VENDOR EMPLOYEE NAME, DATE AND TIME OF YOUR ATTEMPT TO HAVE THE WV-96 SIGNED. IF CONTACT WAS BY E-MAIL, ATTACH THE E-MAIL SHOWING THE REFUSAL. (INITIAL HERE )

PHONE CONTACT DETAIL INFORMATION:

WHAT WILL BE THE ADVERSE EFFECT TO YOU IF YOUR REQUEST IS DENIED?

APPROVED:

DENIED:

\_\_\_\_\_  
(Signature of the Information Technology Officer)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of the Vice Chancellor for Administration)

\_\_\_\_\_  
(Date)



## VIDEO SURVEILLANCE POLICY

### PURPOSE

This policy sets out the guidelines within which the Higher Education Policy Commission (“Commission”) and the Council on Community and Technical College Education (“Council”) (collectively, “the agencies”) will employ surveillance security cameras on their premises. It establishes standards for the installation, viewing, recording, access to, release, and destruction of recorded video.

The agencies will employ surveillance cameras to enhance the safety and security of their employees, property, and premises, as well as its contractors, service providers, and visitors, considering individuals’ reasonable expectations of personal privacy. The primary intent of the use of surveillance cameras is to discourage the occurrence of behavior violating laws or policies and to secure evidence that enhances the likelihood of identifying offenders through post-incident investigations.

### DEFINITIONS

“Agency” or “agencies” means the Higher Education Policy Commission and the Council on Community & Technical College Education.

“Agencies’ facilities” means the executive offices of the Higher Education Policy Commission and the Council on Community & Technical College Education, located at 1018 Kanawha Boulevard East, Charleston, West Virginia.

“Chancellor” means the Chancellor of the Higher Education Policy Commission and/or the Chancellor of the West Virginia Community & Technical College System.

“Signage” means placards or official notices posted within areas where surveillance cameras are employed in accordance with State and federal regulations.

“Surveillance camera” means any item, system, camera, technology device, communications device or process, used alone or in conjunction with a network, for the purpose of gathering, monitoring, recording or storing an image or images of the agencies’ facilities and/or people in the agencies’ facilities. These devices may include, but are not limited to, analog and digital surveillance cameras, closed circuit televisions, web cameras, and computerized visual monitoring.

“Surveillance camera data” means images captured by surveillance cameras, which may be real-time or preserved for review at a later date.

## **PROCEDURE**

### **1. Installation**

The Administrative Services Division is responsible for the management of video surveillance systems used by the agency. The Executive Vice Chancellor for Administration will approve the installation and the appropriate placement of surveillance cameras. Other divisions shall not install video surveillance systems without the knowledge and prior approval of the Executive Vice Chancellor for Administration. The Administrative Services Division will maintain a record of each authorized camera location. Surveillance cameras employed by the agencies are limited to video recording capabilities only; no audio surveillance can be detected or recorded by these cameras.

Employees are not permitted to create audio or video recordings of conversations, meetings or conferences without prior written approval of the Executive Vice Chancellor for Administration and the approval of the parties being recorded. This restriction does not apply to open public meetings. Employees discovered making unapproved recordings will be subject to disciplinary action, up to and including dismissal. The Executive Vice Chancellor for Administration may make exceptions to this restriction for employees who present medical certification of the need to use a recording device as a reasonable accommodation.

Cameras will not be installed in areas where employees, contractors, vendors or visitors could reasonably expect privacy, such as restrooms and break rooms, except in accordance with the procedures for temporary installation of cameras included in this Policy. Video surveillance cameras also will not be installed in conference rooms, employee offices or where confidential information may be copied or transmitted, except in accordance with the procedures for the temporary installation of cameras.

### **2. Signage**

Before live camera monitoring and recording may begin, in all areas where surveillance cameras are installed, signs must be displayed indicating that the area may be monitored. This signage shall serve as the method to inform all employees and visitors of surveillance camera installation. Signage states that surveillance cameras are in use, not that they are being monitored. Monitoring implies 24-hour viewing of live footage.

The one permitted exception to the posting of signage is when a temporary camera employment is required specifically to capture unlawful or inappropriate behavior arising from a documented incident of such behavior in a particular location. The temporary camera installation must be approved in accordance with the procedures set forth below.

### **3. Temporary Installation**

When a detailed case of potential unlawful or policy violative conduct has been documented and presented to the Executive Vice Chancellor for Administration or the Chancellor, either one of them may authorize the use of temporary surveillance cameras. Temporary camera employment may be required to specifically capture suspected unlawful conduct or violations of the agencies' governing standards of conduct.

The footage recorded with temporary surveillance cameras will be subject to the same camera monitoring and access restrictions as permanently employed surveillance cameras. The only exception is that authorized viewing of footage is limited to the Executive Vice Chancellor for Administration and the Chancellor, in conjunction with the General Counsel, unless another individual is specifically authorized by the Chancellor or law enforcement as deemed necessary to an investigation. Temporary surveillance cameras can be employed for a maximum of 30 consecutive days, unless the Executive Vice Chancellor for Administration or the Chancellor gives written authorization for a longer period of time.

### **4. Viewing**

All video surveillance cameras are capable of being recorded continuously by a digital video recording system. Recorded video is used exclusively for the investigation of security and safety incidents and not for other purposes. Viewing of surveillance camera footage (either live video feed or recording) shall be conducted only by personnel authorized directly by the Executive Vice Chancellor for Administration or the Chancellor. Any member of the Chancellor's Cabinet may submit a request to the Executive Vice Chancellor for Administration to view specific footage for a particular reason outlined by the Cabinet member in his or her request. In some limited circumstances, the Executive Vice Chancellor for Administration may authorize other designated supervisors to view surveillance camera footage.

Any employee authorized by the Executive Vice Chancellor for Administration to view surveillance camera footage shall perform their duties in a legal, responsible, and ethical manner. The Chancellor, Executive Vice Chancellor for Administration or other designated individuals viewing the live footage or conducting investigations of stored video footage shall not discuss information contained within or regarding the footage to any individual other than the Executive Vice Chancellor for Administration or those designated by her or him. All designated individuals viewing live feed and/or reviewing recorded video footage will be required to sign a confidentiality agreement to prevent unauthorized disclosure.

Surveillance camera viewing does not guarantee that someone on the agencies' property is safe from crime. The agencies' employees and other invitees to the property should have no expectation that the surveillance cameras are being monitored 24-hours per day, seven days per week, nor that the Administrative Services Division is going to observe or respond to a crime in progress.

## **5. Access and Release**

The Executive Vice Chancellor for Administration or Chancellor has exclusive control of the release of video recording produced by this system. Only personnel authorized by the Chancellor or Executive Vice Chancellor for Administration may review surveillance camera recorded data. Any requests for access to video recording must be approved by the Executive Vice Chancellor of Administration and/or the Chancellor. Circumstances that may warrant a review should be limited to instances where an incident has been reported or observed or for investigation of a potential crime or violation of the policies regarding employees' standards of conduct. A request to review recorded footage must be submitted in writing to the Executive Vice Chancellor for Administration. All viewing shall be recorded on a written log identifying the need to review the recording, the individuals present, and the date and time of the viewing. The log shall be maintained for a period of 12 months by authorized personnel of the Administrative Services Division.

Requests from within or outside the agencies to release or obtain a copy of recorded data must be authorized by the Executive Vice Chancellor for Administration and the General Counsel prior to release. Recorded data may be released when it is related to a criminal investigation, civil suit, subpoena or court order, arrest of any employee or non-employee occurring on the agencies' premises or disciplinary or personnel action against an employee. Any release of recorded data shall be detailed on a written log, including a brief description of the footage released; its date, time, and location; and any supporting documentation necessitating its release (i.e. subpoena, court order, etc.).

## **6. Storage and Retention**

Images and video captured by the surveillance cameras will be for a minimum of 30 days, unless required for a continuing investigation of an incident, after which the recorded data will be erased or destroyed.

All recorded data shall be stored on assigned secure network video recorders with secured access. Recorded data retained for investigation purposes shall be strictly managed, with access limited to personnel authorized by the Executive Vice Chancellor for Administration.

## **REFERENCES**

W. Va. Code § 21-3-20



## WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

### WEBSITE ACCESSIBILITY POLICY

The West Virginia Higher Education Policy Commission (Commission) is committed to ensuring accessibility of its website for students, parents, and members of the community with disabilities. All pages on the website will conform to the World Wide Web Consortium's (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0, Level AA conformance, or updated equivalents of these guidelines.

The Chancellor of the West Virginia Higher Education Policy Commission is directed to establish procedures whereby students, parents, and members of the public may present a complaint regarding a violation of the Americans with Disabilities Act (ADA), Section 504 and Title II related to the accessibility of any official Commission web presence which is developed by, maintained by, or offered through the Commission or third-party vendors and open sources.

#### **Website Accessibility**

With regard to the Commission website and any official Commission web presence which is developed by, maintained by, or offered through third-party vendors and open sources, the Commission is committed to compliance with the provisions of the Americans with Disabilities Act (ADA), Section 504 and Title II. This is so that students, parents and members of the public with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as those without disabilities, with substantially equivalent ease of use; and that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any Commission programs, services, and activities delivered online.

All existing web content produced by the Commission, and new, updated and existing web content provided by third-party developers, will conform to Web Content Accessibility Guidelines (WCAG) 2.0, Level AA conformance, or updated equivalents, by December 31, 2018. This Regulation applies to all new, updated, and existing web pages, as well as all web content produced or updated by the Commission or provided by third-party developers.

The Commission staff will be responsible for reviewing and evaluating new material that is published and uploaded to the website for accessibility on a periodic basis. The Commission staff will be responsible for reviewing all areas of the Commission's website and evaluating its accessibility on a periodic basis, and at least once per quarter. Any non-conforming webpages will be corrected in a timely manner.

#### **Website Accessibility Concerns, Complaints and Grievances**

A student, parent or member of the public who wishes to submit a complaint or grievance regarding a violation of the Americans with Disabilities Act (ADA), Section 504 or Title II related to the accessibility of any official Commission web presence that is developed by, maintained by, or offered through the Commission, third-party vendors and/or open sources may complain directly to the

Commission webmaster. The initial complaint or grievance should be made using Website Accessibility Complaint/Request Form; however, a verbal complaint or grievance may be made. When the webmaster receives the information, they shall immediately inform the Executive Vice Chancellor for Administration.

Whether or not a formal complaint or grievance is made, once the Commission has been notified of inaccessible content, effective communication shall be provided as soon as possible to the reporting party to provide access to the information. The Complainant should not have to wait for the investigation of the complaint to be concluded before receiving the information that he/she was unsuccessful in accessing.

Complaints should be submitted in writing, via email, or by completing the website complaint form. To file a complaint or grievance regarding the inaccessibility of the Commission's public website content, the Complainant should submit a description of the problem, including:

- Complainant Name
- Complainant Mailing Address
- Date of the Complaint
- Description of the problem encountered
- Web address or location of the problem page
- Solution desired
- Contact information in case more details are needed (email and phone number)

The complaint or grievance will be investigated by the Commission staff designated by the Chancellor. The student, parent, or member of the public shall be contacted no later than five (5) working days following the date the website accessibility compliance coordinator receives the information. The procedures to be followed are:

An investigation of the complaint shall be completed within fifteen (15) working days. Extension of the timeline may only be approved by the Chancellor or Executive Vice Chancellor for Administration.

The investigator shall prepare a written report of the findings and conclusions within five (5) working days of the completion of the investigation.

The investigator shall contact the Complainant upon conclusion of the investigation to discuss the findings and conclusions and actions to be taken as a result of the investigation.

A record of each complaint and grievance made pursuant to this policy shall be maintained at the Commission office. The record shall include a copy of the complaint or grievance filed, report of findings from the investigation, and the disposition of the matter.

**Website Accessibility Complaint/Request Form**

Date of Complaint/Request: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Website address/location of accessibility problem \_\_\_\_\_

Description of the problem encountered: \_\_\_\_\_

\_\_\_\_\_

Solution desired: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Thank you for bringing this matter to the Commission’s attention. You may be contacted if more information is needed to process your complaint/request. The investigation process is typically completed within fifteen (15) working days from the date it was received.

***Completed Complaint/Request forms should be submitted to:***

West Virginia Higher Education Policy Commission

Attn.: Director of Communications

1018 Kanawha Boulevard East, Suite 700

Charleston, WV 25301

chancellor@wvhepc.edu

**TITLE 133  
PROCEDURAL RULE**

**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 14  
HOLIDAYS**

**§133-14-1. General.**

1.1. Scope. -- Rule regarding holidays in the state system of higher education.

1.2. Authority. -- West Virginia Code §18B-1-6.

1.3. Filing Date. -- October 31, 2019.

1.4. Effective Date. -- December 1, 2019.

1.5. Repeal of Former Rule. -- Repeals and replaces Title 133, Series 14 which had an effective date of April 19, 2002.

**§133-14-2. Granting Power.**

2.1. The West Virginia Higher Education Policy Commission (Commission) hereby directs that the governing board or president of each institution shall determine six holidays which will be observed by the employees of that institution in addition to the six holidays specified in Section 3.1 of this rule.

**§133-14-3. Number of Full Holidays.**

3.1. The number of full holidays shall be twelve, plus additional days for any statewide, primary or general election. Specified holidays shall include Independence Day, Labor Day, Thanksgiving Day, Christmas Day, New Year's Day, and Martin Luther King's Birthday. Six additional days determined by the governing board or president as provided in Section 2.1 shall also be taken. If a specified holiday falls on a Saturday or Sunday, the preceding Friday or the following Monday will be observed as the legal holiday.

3.2. Proclamation of additional legal holidays by the president of the United States, governor, or other duly constituted authority may be observed by employees as determined and communicated by the president of the institution. The president of the institution may determine that any such additional legal holidays shall be observed at a future date, if operational needs of the institution require the holiday not be observed on the date proclaimed.

**§133-14-4. Half Holidays.**

4.1. As specified in the regulations of the division of personnel for agencies of the executive branch of state government, one-half day preceding Christmas or New Year's Day shall be a holiday when Christmas or New Year's Day falls on Tuesday, Wednesday, Thursday, or Friday.

**§133-14-5. Schedules.**

5.1. Holiday schedules are to be established and used on a fiscal year basis.

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5.2. The president of each institution shall assure that the list is posted in appropriate locations on campus, including, but not limited to, the institution's website.

**§133-14-6. Commission and West Virginia Network for Educational Telecomputing.**

6.1. The Chancellor shall determine the holiday schedule for the staff of the Commission and WVNET.

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

**SERIES 29  
TRAVEL**

**SECTION 1. GENERAL**

1.1 Scope:

1.1.1 This rule implements the guidelines and procedures concerning management of in-state, out-of-state and international travel, hereinafter referred to as "travel," and for reimbursement of expenses to members of the institutional Boards of Governors, hereinafter referred to as the "Governing Boards" and/or "Board," members of the West Virginia Higher Education Policy Commission, hereinafter referred to as "Commission," the employees of the Governing Boards and Commission , and other non-employees traveling on behalf of the Governing Boards or the Commission.

1.1.2 Consultants and contractors are not required to use these rules and regulations, at the Governing Board's or Commission's option.

1.1.3 Reimbursement of travel expenses paid from federal, state and private grants shall be governed by the terms and conditions of the grant if they differ from those contained in this rule; otherwise, this rule shall govern such reimbursement.

1.1.4 As used in this rule, all terms have the same meaning as provided in West Virginia Code §18B-1-2. For the purposes of this rule, the Commission Office and West Virginia Network for Educational Telecomputing (WVNET) shall be considered institutions.

1.1.5 Each Governing Board shall promulgate travel rules, policies and procedures for managing travel at its institution(s) consistent with this rule, state and federal laws, and Internal Revenue Service (IRS) regulations.

1.2 Authority: West Virginia Code §12-3-11

1.3 Filing Date: July 2, 2002

1.4 Effective Date: August 1, 2002

- 1.5 Repeal of Former Rules: Title 131, Procedural Rule of the State College System of West Virginia, Series 47, and Title 128, Procedural Rule of the University System of West Virginia, Series 47.
- 1.6 According to the West Virginia Code, it shall be unlawful for the Auditor to issue a warrant in payment of any claim for travel expenses incurred by an employee, Board or Commission member, or other non-employee unless such claim meets all the requirements of this rule.

## **SECTION 2. PROVISIONS APPLICABLE ONLY TO THE COMMISSION AND THE GOVERNING BOARDS**

- 2.1 The Commission and the Governing Boards may authorize payment for the traveling expenses incurred by any person, and her or his spouse when appropriate, who is invited to visit the campus of any institution of higher education, or any other facility under the control of the Commission or Governing Board, to be interviewed concerning her or his possible employment by the Commission or Governing Board or agent thereof. Authorization for such payment shall be given by the Commission and/or Chancellor, or the Governing Board and/or institutional president, or other administrative head of an institution.
- 2.2 Payment may be authorized for: (1) all or part of the reasonable expenses incurred by a person newly employed by the Commission or Governing Board in moving such employee's household furniture, effects and immediate family to the employee's place of employment; and (2) all or part of the reasonable expenses incurred by an employee in moving her or his household furniture, effects and immediate family as the result of reassignment of the employee which is considered desirable, advantageous to and in the best interest of the Commission or Governing Board; provided, that no part of the moving expenses of an employee shall be paid more frequently than once in twelve months. Authorization for such payment shall be given by the Commission and/or Chancellor, or the Governing Board and/or institutional president or other administrative head of an institution.

## **SECTION 3. DELEGATION OF AUTHORITY AND RESPONSIBILITIES**

- 3.1 Authority to manage, approve or disapprove travel and travel related expenses is delegated to the Chancellor for and on behalf of the Commission, and to the Governing Boards for and on behalf of their respective institution(s). A Governing Board may delegate authority to the president and/or other administrative head of an institution, hereinafter called the "Chief Executive Officer" to manage, approve or disapprove travel and travel related expenses at their institution. Such delegated authority shall be made by resolution of the Board and may also be revoked or modified by the Board.

- 3.2 The Chancellor or Chief Executive Officer may also delegate authority to others within her or his respective institution(s) to act as her or his designee(s) for authorizing and approving travel and travel related expenses. All such authorizations and approvals shall be made in accordance with the provisions of this rule.
- 3.3 Travel may be authorized only for official business and only if the institution has the financial resources to reimburse the traveler for travel expenses.
- 3.4 The Chancellor and Chief Executive Officer shall develop policies and procedures for her or his institution, consistent with this rule, to provide additional guidance to employees and others traveling on behalf of the institution.
- 3.5 The responsibility to audit a traveler's expense account settlement lies with the institution. Approval of a traveler's expense account settlement by the institution means that the expense settlement meets all criteria established for reimbursement. The institution shall audit and submit an accurate expense account settlement for reimbursement to the State Auditor's Office within a reasonable amount of time after receiving such settlement from the traveler.

**SECTION 4. TRAVEL REGULATIONS APPLICABLE TO EMPLOYEES, COMMISSION AND GOVERNING BOARD MEMBERS, AND NON-EMPLOYEES**

- 4.1 Employees
  - 4.1.1 Approval to travel shall be secured in advance by the employee in accordance with this rule and the policies and procedures of the institution.
  - 4.1.2 Employees are responsible for submitting a travel expense account settlement form, with all required receipts and attachments, to her or his institution within a reasonable amount of time after the last day of travel, as defined by the institution, in order to qualify for reimbursement of expenses or for payment.
- 4.2 Members of the Commission and Governing Board
  - 4.2.1 This rule shall govern reimbursement of travel expenses to members of the Commission and Governing Boards when a Commission or Board member requests reimbursement for travel expenses.
- 4.3 Non-Employees



- 4.3.1 When non-employees are eligible to receive reimbursement of travel expenses, reimbursement shall be made in accordance with this rule and the policies and procedures of the institution.

## **SECTION 5.           TRANSPORTATION**

### **5.1   Air Transportation**

#### **5.1.1   Commercial Airlines**

- 5.1.1.1   Reimbursement for commercial airline travel shall include the actual expense or cost of the least expensive logical fare via the most direct route, or a reasonable alternative route if it results in lower fare. Travelers may not specify a particular airline in order to accumulate mileage or promotional plans, such as frequent flyer programs, if it results in a higher airfare.
- 5.1.1.2   Travelers are expected to make advance bookings through a contracted travel service vendor or as otherwise approved by the institution to secure the least expensive airfare possible. Reimbursement may be made to the traveler in advance for airfare purchased up to 180 days before the trip begins.
- 5.1.1.3   In order to receive reimbursement, the traveler must submit the "passenger coupon" or certified copy of the commercial airline ticket. Refundable or unused airline tickets shall be returned immediately.
- 5.1.1.4   Commercial airline tickets may be direct billed to the institution and paid in advance of the travel if allowed by the institution's policies and procedures.

#### **5.1.2   Use of Aircraft Owned and Managed by the Department of Administration and Other State Agencies, Chartered Aircraft Service, and Privately Owned Aircraft.**

- 5.1.2.1   For use of aircraft owned and managed by the Department of Administration and other agencies, the traveler shall follow the rules and regulations of such agencies in scheduling, making reservations, utilizing, and making payment to these agencies for use of their aircraft.
- 5.1.2.2   If authorized by the Chancellor or Chief Executive Officer or designee(s), chartered aircraft service and privately owned aircraft may be used by the traveler if it will result in the lowest airfare, and if it is approved in advance by

the appropriate institutional officer. Direct billing may be used to pay for such service and aircraft use, if allowed by the institution's administrative policies and procedures.

## 5.2 Ground Transportation

5.2.1 A traveler may use a state owned vehicle, privately owned vehicle, a commercial rental vehicle, or rail service for ground transportation when traveling on official business of the institution. Receipts and documentation are not required unless otherwise indicated below or required by the institution:

5.2.1.1 State Owned Vehicles: The availability and use of a state owned vehicle will be determined by the institution's policies and procedures.

5.2.1.2 Privately Owned Vehicles: Privately owned and courtesy vehicles may be used. Reimbursement will be made in accordance with the institution's policies and procedures and shall not exceed the prevailing rate per mile established by the Internal Revenue Service.

5.2.1.3 Commercial Rental Vehicles: Commercial rental vehicles may be used. Reimbursement will be made at actual cost for the daily rental fee for a mid-size or smaller vehicle, plus insurance, mileage fees and fuel costs in accordance with the institution's policies and procedures. Receipts/documentation is required for reimbursement.

5.2.1.3 Rail Service: May be used for ground transportation in accordance with the institution's guidelines and procedures. Travelers are expected to make advanced bookings and use the least expensive logical fare via the most direct route, or other reasonable route that results in a lower fare. Receipts/documentation is required for reimbursement.

5.2.1.4 Miscellaneous Ground Transportation: Miscellaneous ground transportation may be reimbursed in accordance with the institution's guidelines and procedures.

5.2.2 The operator (traveler) of a vehicle must possess a valid operator's license. The operator is personally responsible for any fines and/or penalties resulting from citations, charges, or warrants attributable to operator negligence. Such fines and/or penalties shall not be a reimbursable expense.

5.2.3 In cases where a traveler chooses to drive rather than fly while on business, reimbursement will be based on actual in-transit expenses (mileage, hotel, meals, etc.), not to exceed the lowest

available commercial airfare plus local transportation to and from the airport.

- 5.2.4 Roadside assistance services for fleet, rental and personal vehicles, if needed, may be reimbursed at actual cost if deemed appropriate and reasonable by an institutional officer authorized to approve travel expenses.

## **SECTION 6. LODGING**

- 6.1 Reimbursement for lodging shall include actual expenses for overnight accommodations, use of a room during daytime, and all applicable taxes and surcharges. Reservations for lodging shall be made according to the institution's policies and procedures. Lodging receipts are required for reimbursement.
- 6.2 Lodging may be direct billed if allowed by the institution's policies and procedures; however, the traveler must attach a copy of the lodging invoice or other proof of lodging to the traveler's final expense account settlement.

## **SECTION 7. MEALS**

- 7.1 Meal expense reimbursement shall be made in accordance with the institution's policies and procedures and is limited to actual expenses for food, service and gratuities up to the applicable maximum daily rate authorized by the Commission or Governing Board. Specifically excluded are alcoholic beverages and entertainment expenses.
- 7.2 Receipts are not required for meal reimbursement.

## **SECTION 8. REGISTRATION FEES**

- 8.1 Fees or charges for attendance at conferences, meetings, seminars, and/or workshops, as well as event related materials, are reimbursable expenses to the traveler and shall be made according to the institution's policies and procedures. Registration fees may also be direct billed to the institution when feasible.
- 8.2 Receipts are required for reimbursement. The receipt/documentation provided by the event sponsor shall be sufficient for reimbursement.
- 8.3 The traveler shall not receive an allowance or reimbursement for lodging or food that is included in registration fees.

## **SECTION 9. OTHER EXPENSES**

- 9.1 Travelers may incur other business related expenses for which reimbursement may be made if appropriate. Receipts are not required unless reimbursement is in excess of current Internal Revenue Service limits for miscellaneous expenses, or unless otherwise required by the institution. Such expenses and reimbursement may include, but are not limited to:
- a. Baggage handling and gratuities when using public transportation or conveniences (i.e., taxi, limousine, air porter services, or airport/rail curbside check-in), or when using a lodging facility that has portering (i.e., "bell person") services rather than a facility where the traveler is expected to carry her or his own luggage;
  - b. Baggage storage between appointments, and between hotels and meeting places;
  - c. Tolls, garage and parking fees, including gratuities;
  - d. Communication expenses such as: (1) local calls which may include a surcharge; (2) long distance calls which may include toll charges and surcharges; (3) surcharges for long distance calls when the toll charges are direct billed; (4) cellular telephone charges; and (5) facsimiles, cablegrams, or telegrams which may include toll charges, surcharges, or delivery charges.
  - e. Currency conversion;
  - f. Guides, interpreters, and visa fees; and
  - g. Trips involving multiple days of travel or for single day travel where the traveler is unexpectedly delayed for business reasons, the traveler may be reimbursed for one personal telephone call home per day. Reimbursement shall be made at actual cost, not to exceed the maximum amount established by the Governing board, provided the call is not charged to the telecommunications card issued by the state or the Governing board.
- 9.2 Non-reimbursable travel related expenses include the cost of passports (not as a travel expense, but may be considered as a direct charge to the institution), interest on late payment of individually held credit cards, laundry fees, and personal flight or baggage insurance. Exceptions may be approved by the Chancellor, Chief Executive Officer or designee.
- 9.3 Persons traveling in foreign countries should report their expenditures in United States dollars. The total expenditure in foreign currency must be converted into United States dollars at the rate or rates at which the foreign money was obtained. The rates of conversion and the commissions charged must be shown.

## **SECTION 10. FORM OF PAYMENT FOR BUSINESS TRAVEL**

- 10.1 Corporate Charge Card or Credit Card: Travelers should use the corporate charge card issued by the State of West Virginia for business related travel expenses, or a higher education corporate charge card if available.
- 10.2 Cash Advances from the State Auditor's Office: Cash advances for official travel may be requested from the State Auditor's Office according to the procedures established by the Auditor for employee and student travel, and for group travel such as bands, athletic teams and organized student groups. The Governing Boards shall establish policies and procedures for requesting and settling cash advances with the Auditor.
- 10.3 Cash Advances from an Automatic Teller Machine (ATM) using the State Corporate Credit Card:
  - 10.3.1 Employees may secure a cash advance for business travel expenses only. Cash advances are not permitted for personal purposes.
  - 10.3.2 A cash advance for either in-state or out-of-state travel is permissible when an employee travels a minimum of two (2) consecutive days on official business. The preferred method of obtaining a cash advance is to use the state corporate credit card at an ATM. Cash advances and ATM transaction fee reimbursements are limited to the amount and number authorized by the Commission. Receipt(s) from the ATM are required for reimbursement of the ATM transaction fee.
  - 10.3.3 For employees ineligible to receive a state corporate credit card or those who have applied and have not yet received their card, the cash advance procedure in Paragraph 10.2 shall apply.
  - 10.3.4 Each institution shall adopt and actively pursue policies and procedures to manage and minimize credit losses by employees using the corporate charge card.
- 10.4 Direct Billing: Direct billing may be authorized by the appropriate institutional representative in accordance with the institution's policies and procedures. The traveler is responsible for attaching to her/his final expense account settlement copies of receipts, invoices, documentation, etc. for any direct billed fee.

## **SECTION 11. REIMBURSEMENT FORMS**

- 11.1 The form(s) used for reimbursement of travel expenses shall be those promulgated by the Chancellor.

## **SECTION 12. OTHER PROVISIONS**

- 12.1 According to the West Virginia Ethics Commission, frequent flier miles, hotel bonus points or other travel incentives resulting from official business travel may be used only for future official travel.

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

**SERIES 30  
PURCHASING**

**§133-30-1. General.**

1.1. Scope.-- This joint rule establishes rules and policies governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment by the West Virginia Higher Education Policy Commission, created pursuant to West Virginia Code §18B-1B-1 and hereinafter referred to as the "Commission", the West Virginia Council for Community and Technical College Education, created pursuant to West Virginia Code §18B-2B-3 and hereinafter referred to as the "Council" and the institutional boards of governors, created pursuant to West Virginia Code §18B-2A-1 and hereinafter referred to as the "Governing Boards."

1.2. Authority. -- West Virginia Code §18B-1-6, §18B-5-4 through §18B-5-9.

1.3. Filing Date. -- August 23, 2016.

1.4. Effective Date. -- September 23, 2016.

1.5. Modification of Existing Rule. Title 133, Series 30, Procedural Rule of the West Virginia Higher Education Policy Commission dated January 21, 2005.

**§133-30-2. Definitions.**

2.1. As used in this rule, all terms have the same meaning as provided in West Virginia Code §18B-1-2, and as follows:

2.1.a. "Bid" means a response by a vendor to a solicitation issued by the Commission. This includes Request for Proposals, Request for Quotations and any other solicitation methodology used by the Commission.

2.1.b. "Buyer" means an individual designated by a chief procurement officer or director of procurement to perform designated purchasing and acquisition functions as authorized by the chief procurement officer/director of procurement.

2.1.c. "Chancellor for higher education" means the chief executive officer of the Commission employed pursuant to West Virginia Code §18B-1B-5.

2.1.d. "Chancellor for community and technical college education" means the chief executive officer of the Council employed pursuant to West Virginia Code §18B-2B-3.

2.1.e. "Commission Office" means the office that houses the Vice Chancellor for Administration and such professional, administrative, clerical and other employees as may be necessary to assist the Vice Chancellor for Administration perform his or her functions, tasks and duties.

2.1.f. "Chief procurement officer" means the individual designated by a president of a state institution of higher education to manage, oversee and direct the purchasing, acquisition and inventory

management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment for that institution. For the Commission Office and West Virginia Network for Educational Telecomputing, the chief procurement officer is the person designated by the Vice Chancellor for Administration.

2.1.g. "Commodity" means an article which is useful or serviceable, particularly an article of merchandise movable in trade; a good, or service of any kind, including construction; an article of trade or commerce; things that are bought and sold.

2.1.h. "Director of Procurement" means the individual designated by the Vice Chancellor for Administration to manage, oversee and direct the purchasing, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment for the Commission Office and West Virginia Network for Educational Telecomputing.

2.1.i. "Essential service" means something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.

2.1.j. "Institution(s)" means any public West Virginia university, college, and community and technical college, individually or collectively, created pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Commission Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

2.1.k. "F.O.B. destination" and "free on board destination" mean the seller or vendor must transport or pay for the transportation of the materials, supplies, equipment, services, and printing, to the point of destination specified in the contract.

2.1.l. "Governing Boards" or "Boards" means the institutional boards of governors created pursuant to West Virginia Code §18B-2A-1.

2.1.m. "Higher education institution" means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

2.1.n. "President" means the chief executive officer of a higher education institution.

2.1.o. "Purchase order" means the document issued by the Commission to a vendor for the acquisition of goods and services. A purchase order may also be referred to as a "contract".

2.1.p. "Sole source" means only one vendor can supply the desired product or service.

2.1.q. "Single source" means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.

2.1.r. "Responsible bidder" and "responsible vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

2.1.s. "Responsive bidder" and "responsive vendor" mean a person and/or vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

2.1.t. "Vendor" means a seller of goods and services. A vendor must be registered with the West Virginia Department of Administration prior to the receipt of a purchase order or contract.



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2.1.u. “West Virginia Council for Community and Technical College Education” or “Council” means the council created pursuant to West Virginia Code §18B-2B-1.

2.1.v. “West Virginia Higher Education Policy Commission” or “Commission” means the commission created pursuant to West Virginia Code §18B-1B-1.

2.1.w. “Vice Chancellor for Administration” means that person employed by the Commission with the advice and consent of the Council in accordance with West Virginia Code §18B-4-2. The Vice Chancellor for Administration shall assume all powers and duties that were assigned to the Senior Administrator.

### **§133-30-3. Applicability.**

3.1. This procedural rule applies to all institutions as defined in Section 2 of this rule.

### **§133-30-4. Authority of the Commission and Council.**

4.1. Pursuant to West Virginia Code §18B-5-4, the Commission and Council shall jointly adopt rules governing and controlling acquisitions, purchases and inventory management of materials, supplies, equipment, services, construction, and printing, and the disposal of obsolete and surplus materials, supplies, and equipment.

### **§133-30-5. Authority and Duties of the Vice Chancellor for Administration.**

5.1. The Vice Chancellor for Administration shall, in the name of the Commission and Council, have the authority and duty to:

5.1.a. Administer and oversee the purchasing system of the Commission, Council and Governing Boards;

5.1.b. Recommend to the Commission and Council additional rules or modifications to this rule as may be required for efficient and cost effective management of purchases, inventorying of materials, supplies, and equipment and disposal of obsolete and surplus materials, supplies, and equipment;

5.1.c. Develop administrative manuals, guidelines, procedures, and forms which shall be followed by the institutions for purchase, acquisition and inventory management, and disposal of obsolete and surplus materials, supplies, and equipment;

5.1.d. Provide for a periodic audit of the institutions for compliance with the rules and policies that have been adopted by the Commission and Council and the administrative manuals, guidelines, procedures and forms developed by the Vice Chancellor for Administration;

5.1.e. If requested, provide assistance to one or more institutions in the purchase, acquisition and inventory management of materials, supplies, equipment, services, construction and printing, and in disposal of obsolete or surplus materials, supplies and equipment; and

### **§133-30-6. Delegation of Purchasing Authority and Responsibilities.**

6.1. The Commission, Council and each Governing Board, through the Vice Chancellor of Administration, or as may be delegated by him or her, shall purchase or acquire materials, supplies, equipment, services, construction and printing as required by that Governing Board or the Commission and Council, as appropriate, and the institution(s) under their jurisdiction. Each Governing Board shall have fiduciary responsibility to ensure that purchases and acquisitions are made within the limits of

available appropriations and funds in accordance with applicable provisions of West Virginia Code §5A-2-1 et seq., and for the inventory of materials, supplies and equipment and for disposal of obsolete or surplus materials, supplies and equipment as required by the institution(s) under their jurisdiction.

6.2. In order to assist the Governing Board in carrying out its duties, obligations and responsibilities under this rule, the Board may, by resolution of the Board, delegate authority to the institution's president who shall have overall control and management of the institution's purchases, inventory, and disposal of obsolete or surplus materials, supplies and equipment as required by that institution. The president shall appoint a chief procurement officer to assist the president in carrying out the duties, obligations and remedies imposed by the Governing Board and this rule. This appointment shall be made in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General.

6.3. Unless otherwise stated in writing by the president, the chief procurement officer shall have full authority to act as the designee of the president for purchase, acquisition, receipt of and inventory management of all materials, supplies, equipment, services, construction, and printing, and for disposal of obsolete or surplus materials, supplies, and equipment as may be required by the institution.

**§133-30-7. Authority, Duties and Remedies of the Chief Procurement Officer/Director of Procurement.**

7.1. The chief procurement officer or the director of procurement shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, inventory management and disposal of surplus and obsolete property as the designee of the president, or of the Vice Chancellor for Administration in the case of the Commission and Council Offices and West Virginia Network for Educational Telecomputing, and shall serve as the central procurement officer for the institution. This individual may also fulfill other institutional functions.

7.2. The chief procurement officer or the director of procurement may appoint buyers and delegate authority to them as designees, or to any department within the institution. Delegation of authority by the chief procurement officer or the director of procurement, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Responsibility for ensuring institutional compliance with the West Virginia Code and this rule shall rest with and be the responsibility of the chief procurement officer or director of procurement.

7.3. As required by law and this rule, and consistent with administrative manuals, guidelines and procedures developed by the Vice Chancellor for Administration, the chief procurement officer or director of procurement shall have the duty and/or authority to:

7.3.a. Purchase and contract for the materials, supplies, equipment, services, construction and printing required by the institution;

7.3.b. Establish institutional guidelines and procedures for purchases not exceeding \$50,000;

7.3.c. Establish institutional guidelines and procedures for receiving, inventorying and distributing materials, supplies, equipment, services, and printing;

7.3.d. Review specifications and descriptions before soliciting bids or proposals to ensure that they are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;

7.3.e. Advertise for bids on all purchases exceeding \$50,000, and post or otherwise make available notices of all purchases for which competitive bids or proposals are being solicited by the institution's purchasing office;

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- 7.3.f. Maintain the institution's purchasing files;
  - 7.3.g. Accept or reject any and all bids in whole or in part;
  - 7.3.h. Waive minor irregularities in bids, bidding documents and/or specifications;
  - 7.3.i. Apply and enforce standard specifications;
  - 7.3.j. Manage the institution's inventory of materials, supplies and equipment, authorize transfers to or between institutions, and sell surplus, obsolete or unused materials, supplies, and equipment;
  - 7.3.k. Prescribe the amount of deposit or bond to be submitted with any bid or contract;
  - 7.3.l. Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
  - 7.3.m. Exempt from competitive bidding purchases of materials, supplies, equipment, services, and printing purchased from within state government, from West Virginia sheltered workshops, from cooperative buying groups and consortia, and from the federal government or federal government contracts when price, availability and quality are comparable to those on the open market;
  - 7.3.n. Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
  - 7.3.o. Hear and render opinions on vendor complaints and protests;
  - 7.3.p. Ensure vendors are registered with the Department of Administration's Vendor/Customer File in accordance with the West Virginia Code;
  - 7.3.q. Apply the preference for resident vendors required by the West Virginia Code;
  - 7.3.r. File contracts and purchase orders that exceed the dollar limit required for competitive sealed bidding with the State Auditor;
  - 7.3.s. Submit contracts and purchase orders to the Attorney General for approval or as may be required by law, administrative procedures and guidelines;
  - 7.3.t. Ensure that purchases exceeding the dollar amount for competitive bidding are encumbered and entered into the State's accounting system as required by West Virginia Code §18B-5-4(g) and §5A-2-1 et. seq.
  - 7.3.u. Apply and enforce other applicable provisions of state and federal laws pertaining to purchases, inventory management and disposal of surplus and obsolete materials, supplies, and equipment.
- 7.4. Remedies that are available to the chief procurement officer or director of procurement when appropriate circumstances arise include:
- 7.4.a. In the event that a vendor fails to honor any contractual term or condition, the chief procurement officer or the director of procurement may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;

7.4.b. Vendors failing to honor contractual obligations may be held responsible for all differences in cost;

7.4.c. Declare a vendor or bid non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document available for inspection at all reasonable times; and

7.4.d. Suspend, for a period not to exceed one (1) year, the right of a vendor to bid when there is reason to believe that such vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or state law.

**§133-30-8. Purchase or Acquisition of Materials, Supplies, Equipment, Services, and Printing.**

8.1. Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services, and printing shall be awarded by competitive bidding, except as provided in the following paragraphs of this rule:

- 8.1.a. Purchases not exceeding \$50,000;
- 8.1.b. Competitive sealed proposals;
- 8.1.c. Competitive selection procedures for professional services;
- 8.1.d. Sole source and single source procurement;
- 8.1.e. Emergency procurement;
- 8.1.f. Open end and federal contracts; and
- 8.1.g. Essential services.

8.2. Specifications shall be written to maximize and encourage competition. In certain cases, a "brand name or equal" may be used as a specification.

8.3. All purchases and acquisitions shall be made in consideration of and within limits of available appropriations and funds and in accordance with applicable provisions of West Virginia Code §5A-2, relating to expenditure schedules and quarterly allotments of funds.

8.4. Award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and extended price. In some cases multiple and/or split awards may be made when determined to be in the best interest of the institution. Occasionally, purchase orders may be issued which impose no obligation to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements. In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder, taking into consideration the above factors.

8.5. The chief procurement officer or director of procurement may accept or reject, in whole or in part, any bid or proposal when the chief procurement officer or director of procurement believes it to be

in the best interest of the institution. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.

8.6. When tie bids or proposals are received, the tie shall be broken and an award made by allowing the tied vendors to make a "last and final offer." If a tie bid is not broken by a "last and final offer," then the tie may be broken by a flip of a coin, draw of the cards or any other impartial method deemed prudent by the chief procurement officer.

8.7. Except for exemptions granted in the West Virginia Code, all material, supplies, equipment, services, and printing made upon competitive bids or proposals shall be subject to any resident vendor preference set forth in the West Virginia Code.

8.8. The chief procurement officer or director of procurement shall determine the applicability and amounts of bonds and/or deposits required of a vendor at any time, if, in his or her judgment, such security is necessary to safeguard the institution from undue risk. The chief procurement officer or director of procurement may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the chief procurement officer, payable to the institution. Personal checks and/or company checks are not acceptable. When a contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending unit shall certify the completion in writing to the chief procurement officer or the director of procurement. The chief procurement officer or director of procurement, upon receipt of the notification, shall return the check or deposit to the vendor.

8.9. Purchases not exceeding \$50,000.

8.9.a. The chief procurement officer or the director of procurement shall establish institutional guidelines and procedures for purchases not exceeding \$50,000. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. They shall be approved by the president, filed with the Vice Chancellor for Administration and be on file in the institution's purchasing office and made available to the public upon request.

8.9.b. Purchases in this category do not require competitive bids or quotations.

8.10. Purchasing Card.

8.10.a. The state purchasing card may be used as a payment method as provided in applicable provisions of West Virginia Code §12-3-1 et seq., and as follows:

8.10.a.1. Employee travel expenses when the travel is required by the employee's job and is for official business of the institution. Expenses that may be paid using the purchasing card are as follows and are limited to \$5,000 per transaction or the card limit whichever is less:

8.10.a.1.A. Transportation: Commercial air fare, chartered aircraft service, rail service, commercial rental vehicles, and miscellaneous ground transportation and fees such as shuttle service, taxi service and parking.

8.10.a.1.B. Lodging: Room accommodations only. Any extra charges will be the employee's responsibility to pay.

8.10.a.1.C. Fuel: Fuel for commercial rental or fleet vehicles only.

8.10.a.1.D. Meals: Meals for employee travel may not be paid using the purchasing card.

8.10.a.1.E. Reconciliation and settlement of employee travel expenses paid by the purchasing card shall be made according to the State Auditor's procedures, provided the procedures are consistent with the intent of applicable provisions of West Virginia Code §18B-5-4.

8.10.b. Routine and regularly scheduled payments may be made using the purchasing card and are limited to the transaction limit of the card. Routine and regularly scheduled payments mean all payments that have either received Attorney General approval in accordance with statute or do not require such approval, and are made on a regular, predictable and routine basis whether weekly, monthly, annually, or on any other regular schedule.

8.10.b.1. Routine, regularly scheduled payments are limited to the following: association dues; accreditation fees; software licenses and maintenance fees; resale merchandise; maintenance contracts; temporary space rentals; inter-library loan charges; inter/intra-institutional charges; contracts for artists, entertainers, and speakers; open end contracts; license fees of all types; utilities of all types; federal, state and municipal fees and assessments; real property rental fees; postage; books and related items, including those for libraries and bookstores; hospitality expenses; travel expenses; shipping, handling, and freight charges; advertising; subscriptions; periodicals, and publications; athletic and academic team related expenses; and necessary job related medical or drug testing and treatment.

8.10.b.2. In order to provide sufficient accounting and auditing procedures for all purchasing card transactions, each institution shall adopt and effectively use the reconciliation, reporting and payment software for the purchasing card program approved by the State Auditor and the Vice Chancellor for Administration.

8.10.b.3. The Commission and Council may expand the use of the purchasing card for travel and routine and regularly scheduled payments for any institution it determines has the capacity, internal controls and record of effective management to handle the expanded responsibilities.

8.10.c. The Commission and each institution shall maintain a purchasing card that may be used for emergencies declared by the President of an institution and approved by the Chancellor up to the transaction limit of the card as provided in subparagraph 8.16.2.

#### 8.11. Purchases Greater than \$50,000.

8.11.a. Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services, and printing greater than \$50,000.

8.11.b. The chief procurement officer or director of procurement shall advertise for bids on all purchases exceeding \$50,000. The advertisement shall appear no less than 5 days prior to the date bids are due.

8.11.c. The chief procurement officer or director of procurement shall, in addition to advertising, post or otherwise make available notice of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the institution involved in the purchase no less than 5 days prior to making such purchase and shall ensure that the notice is available to the public during business hours.

8.11.d. Bids shall be delivered to the specified location for receipt of bids by the bidder prior to the date and time of the bid opening according to the instruction contained in the request for bids and any addenda or modifications officially issued.

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8.11.e. Bids not properly delivered or received after the required time and date shall not be opened and shall be returned to the bidder.

8.11.f. The bid shall be signed by an authorized agent of the bidder. A corporate signature without an individual's name and signature shall not be construed as an acceptable signature.

8.11.g. Facsimile transmitted bids are not acceptable for bids over \$50,000. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

8.11.h. A bidder may make a written modification to a sealed bid prior to the bid opening, provided modifications are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Written modifications must be received by the chief procurement officer or the director of procurement prior to the date and time of the bid opening. Electronically transmitted modifications are acceptable if submitted prior to the bid opening date and time and the bid price is not revealed.

8.11.i. Originals or copies of bids shall be available for public inspection after the bid opening. Vendors may designate in writing with the bid submission information contained within the bid constituting trade secrets, pursuant to West Virginia Code §29B-1-4(1), which shall be exempt from disclosure. The purchasing files shall be open for public inspection after the award has been made, except for information qualifying for the exemption set out above.

8.11.j. The chief procurement officer or the director of procurement may reject an erroneous bid after the bid opening upon request of the bidder if all of the following conditions exist: (a) an error was made; (b) the error materially affected the bid or proposal; (c) rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services, construction and/or printing at a reduced cost; and (d) enforcement of the part of the bid or proposal in error would be unconscionable. In order to reject a bid or proposal, the purchasing file must contain documented evidence that all of the above conditions exist.

8.11.k. Price and other adjustments shall be allowed on any purchase order if specific provisions for adjustments have been incorporated in the prescribed forms and the purchase order. All such requests for adjustments shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for adjustments has been made, discretion to grant adjustments shall rest with the chief procurement officer.

8.11.l. Every person, firm or corporation selling or offering to sell to the Commission, Council, a Governing Board and its institutions, materials, supplies, equipment, services, construction and printing, upon competitive bid or otherwise, in excess of \$50,000 per order, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to West Virginia Code §18B-5-5 and §5A-3-12. Purchase orders in excess of \$50,000 may not be issued to any vendor not properly registered with the West Virginia Department of Administration.

8.11.m. Contracts, purchase orders and associated documents such as performance and labor/material payment bonds and certificates of insurance are not required to be approved by the Attorney General provided standard terms and conditions or standardized forms previously approved by the Attorney General are used.

8.11.n. Contracts and purchase orders that exceed the amount set forth in West Virginia Code §18B-5-4 for sealed competitive bidding shall be filed with the State Auditor.

8.12. Vendor's Rights and Duties.

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8.12.a. Each vendor is solely responsible for delivery of its bid to the specified prior to the specified date and time of the bid or proposal opening.

8.12.b. If there is a conflict between the extension price and the unit price, the unit price shall prevail.

8.12.c. Any changes made by the vendor in the specifications listed in the bid request must be clearly stated. If changes are not stated, it will be assumed that items offered meet the specifications in all respects.

8.12.d. Vendors are responsible for the accuracy of the information in their bid or proposal and on the bid or proposal envelope.

8.12.e. All sales to the Commission, Council and the Governing Boards are exempt from West Virginia consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.

8.12.f. It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 9, and for reconsideration of suspension, in accordance with the requirements of Section 10 of this rule; otherwise, they shall be waived.

### 8.13. Competitive Sealed Proposals.

8.13.a. For purchases above \$50,000, competitive sealed bids are the preferred method of procurement; however, if it is either not practicable or advantageous, a contract may be entered into by a request for proposals. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. The key element in determining advantageousness will be the need for flexibility.

8.13.b. The request for proposal method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the request for proposals. The vendor responds to the request for proposals with a proposal identifying its intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in a request for proposals, along with a pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to award. Requests for proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. Requests for proposals are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

### 8.14. Competitive Selection Procedures for Professional Services.

8.14.a. The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals; however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases, artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.

8.14.b. The competitive selection process for hiring architects and engineers is set forth in Chapter 5G of the West Virginia Code.

### 8.15. Sole Source and Single Source Procurement.



8.15.a. The chief procurement officer or director of procurement may approve the purchase of materials, supplies, equipment, services and/or printing directly from a vendor without competitive bid or proposals, if any of the following conditions exist: (a) the item cannot be obtained through ordinary purchasing procedures; (b) the item is of unique nature and not available from any other source; or (c) the item is available from a state spending unit or other institution with preference under the West Virginia Code, provided the price, availability and quality are comparable to those in the open market.

8.16. Emergency Procurement.

8.16.a. Emergency purchases exceeding \$50,000 must receive the prior written approval of the chief procurement officer or director of procurement unless made according to subparagraph 8.16.2. An emergency situation requiring purchase of materials, supplies, equipment, services, construction or printing must be the result of unforeseen events or circumstances, including delays by contractors, delays in transportation, or an unanticipated volume of work. Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Competitive bids must be obtained if possible.

8.16.b. The Commission and each institution may maintain a purchasing card for use in and for situations declared an emergency by the president of an institution and approved by the Chancellor. Such emergencies may include but are not limited to partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating ventilating, or air conditioning failure in an essential academic building; loss of campus road, parking lot or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the campus.

8.16.c. In the event of an emergency declared by the president of the institution and approved by the Chancellor, the president or his or her designee may authorize the use of an emergency purchasing card by a designated representative in accordance with the procedures set forth in the State Auditor's Legislative Rule for the purchasing card program.

8.17. Open End Contracts and Federal Contracts.

8.17.a. The Commission, Council or a Governing Board and its institution(s) may enter into open end contracts that were competitively bid for materials, supplies, equipment, services, and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisitions may be made from these contracts without securing any other bids or quotations. These contracts may be made available to other institutions, the Commission and Council for their use.

8.17.b. The Commission, Council, a Governing Board and its institution(s) may, without securing any other bids or quotations, make purchases from cooperative buying groups, consortia, the federal government and from federal government contracts if the materials, supplies, equipment, services, and printing to be purchased are available from these groups, consortia, or the federal government and its contracts, and if this is the most financially advantageous manner of making the purchase.

8.18. Essential Services.

8.18.a. Essential services may be purchased and paid for by the Commission, Council, a Governing Board and its institution(s) without securing competitive bids or proposals or issuing purchase orders. Commodities in this category may include but are not limited to utilities of all kinds; postage; items for resale; municipal, county, state, and federal fees; student awards, stipends, loans and grants; shipping and freight charges; tuition and registration fees and refunds thereof; professional dues; etc. The Vice Chancellor for Administration shall issue guidelines for the purchase of and payment for essential services.

8.19. Motor Vehicle Purchase.

8.19.a. The purchase and leasing of motor vehicles shall be consistent with this rule, and guidelines and procedures adopted by the Commission, Council, a Governing Board and the Vice Chancellor for Administration.

8.20. Procurement File.

8.20.a. The chief procurement officer or director of procurement shall maintain a purchasing file for each procurement or acquisition. This file shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to: (a) bids, proposals or quotations received in response to a request for sealed bids or proposals; however, an unopened bid or proposal shall not be considered a public document or record; (b) identification and certification of the successful bid; (c) why any bid or proposal is rejected in whole or in part; (d) justification for award to other than the lowest vendor; and (e) vendor protests or complaints. The purchasing file shall be a public record open to inspection during normal business hours. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor, except as set forth in subparagraph 8.20.b.

8.20.b. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

8.21. Approval of Lease-Purchase Agreements for the Governing Boards.

8.21.a. After the Commission or Council has granted approval for lease-purchase agreements by a Governing Board, the Governing Board may enter into lease-purchase agreements for capital improvements, including equipment. Any lease-purchase agreement exceeding one million dollars in total must have prior approval of the Commission or Council.

8.21.b. Proposals for any lease-purchase agreements shall be made in accordance with West Virginia Code §18B-19-11. The Vice Chancellor for Administration may establish guidelines and a format for receiving, considering and approving such proposals.

8.21.c. Lease-purchase agreements exceeding one hundred thousand dollars must be approved as to form by the Attorney General.

8.22. Lease Agreements for Grounds, Buildings, Office Space or Other Space.

8.22.a. The Commission, Council and Governing Boards have the authority to enter into lease agreements for grounds, buildings, office space or other space in the name of the State *for more than one fiscal year* but not exceeding forty years under the following conditions:

8.22.a.1. The Commission, Council and institutions shall be responsible for all rent and other necessary payments in connection with the contract of lease; and

8.22.a.2. Satisfactory grounds, buildings, office or other space is not available on grounds and in buildings currently owned or leased.

8.22.b. Before executing any rental contract or lease, the Commission, Council or a Governing Board, as appropriate, shall do the following:

8.22.b.1. Determine the fair rental value of the grounds, building, office space or other space to be leased in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value;

8.22.b.2. Leases shall contain, in substance, all of the following provisions:

8.22.b.2.A. That the Commission, Council or Governing Board, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

8.22.b.2.B. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or causes it to be canceled; and

8.22.b.2.C. That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Commission, Council or the Governing Board before the end of the then-current fiscal year.

8.22.3. The Commission, Council or an institution which is granted any grounds, buildings, office space or other space leased in accordance with West Virginia Code §18B-19-11 may not order or make permanent changes of any type unless the Commission, Council or the Governing Board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

8.22.4. Leases and other instruments for grounds, buildings, office or other space, once approved by the Commission, Council or Governing Board, may be signed by the chief executive officer of the Commission, Council or the institution. A lease and other instrument entered into by a Governing Board that exceeds one million dollars in total must receive prior approval of the Commission or Council, as appropriate, before being executed by the Governing Board or institution.

8.22.5. The Commission or Council shall present to the Joint Committee on Government and Finance for prior review any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisitions of buildings, office space, grounds resulting from a lease entered into pursuant to the provisions of West Virginia Code §18B-19-13, if the transaction exceeds \$1 million.

8.22.6. Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

8.22.7. The Commission and Council may promulgate additional rules deemed necessary to carry out the provisions of this section, and the Vice Chancellor for Administration may issue procedures for complying with this section.

**§133-30-9. Protests and Reconsideration.**

9.1. Protests and requests for reconsideration of a decision made by a chief procurement officer or the director of procurement may only be made by a person and/or vendor who is a potential or actual bidder on that particular contract and/or purchase.

9.2. Protests.

9.2.a. Protests based on specifications or improprieties in any type of solicitation which are apparent or should have been apparent prior to the bid or proposal opening or closing date must be filed not later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following the notice of the institution's intent to award the contract as posted or otherwise made available in the institution's purchasing office for competitive transactions greater than \$50,000. Protests filed prior to five calendar days following the notice of intent to award shall be resolved in accordance with this rule before an award is made. Information regarding awards may be obtained from the institution's purchasing office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner.

9.2.b. The protest must be filed in writing with the chief procurement officer or director of procurement and contain the name and address of the protestor, the requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

9.2.c. The chief procurement officer or director of procurement shall review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the chief procurement officer or director of procurement shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief procurement officer or the director of procurement shall issue a written decision.

9.3. Reconsideration.

9.3.a. Reconsideration of a decision on a protest by the chief procurement officer or director of procurement may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer or director of procurement's written decision, and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

9.3.b. The chief financial officer shall review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief financial officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

9.3.c. The chief procurement officer or director of procurement and chief financial officer may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the chief procurement officer or director of procurement and chief financial officer.

**§133-30-10. Suspension and Reconsideration.**

10.1. Suspension.

10.1.a. The chief procurement officer or director of procurement shall have authority to suspend, for a period not exceeding one year, the right and privilege of a person to bid on purchases of the institution.

10.1.b. The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials, services or construction late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-9 or this rule, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-9 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the chief procurement officer's discovery of such act, omission, or conviction.

#### 10.2. Reconsideration.

10.2.a. Reconsideration of a decision on suspension by the chief procurement officer or director of procurement may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

10.2.b. The chief financial officer will review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded and an official record prepared. Following the hearing, the chief financial officer will issue a decision in writing to the aggrieved party and his or her decision shall be final.

10.2.c. The chief financial officer may refuse to decide any reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects or otherwise expresses interest in the decision of the institution.

#### 10.3. Vice Chancellor for Administration.

10.3.a. An institution that suspends the right and privilege of a vendor to bid on purchases of the institution shall forward a copy of the suspension notice to the chief procurement officer or director of procurement of the Commission Office, who shall maintain a record of such suspension and shall notify all institutions of such suspension.

10.3.b. If the chief procurement officer or director of procurement of the Commission Office determines that the actions of the vendor leading to the suspension by an institution are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justify a system-wide suspension, he or she shall notify the vendor and all institutions of the system-wide suspension.

### **§133-30-11. Qualifications of a Buyer and a Chief Procurement Officer.**

#### 11.1. Buyer.

11.1.a. No person shall be employed as a buyer unless that person, at the time of employment, is either: (a) a graduate of an accredited college or university; or (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

11.1.b. Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this rule. In lieu of separate bonds for such buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of any such bond or bonds shall be paid from funds appropriated to the Commission, Council or Governing Board.

11.2. Chief Procurement Officer/Director of Procurement.

11.2.a. From the date of adoption of this rule by the Commission and Council and henceforth, no new person shall be employed as a chief procurement officer or director of procurement unless that person, at the time of employment, is: (a) a graduate of and has received a baccalaureate degree from an accredited college or university; and (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

11.2.b. The bonding provisions set forth in subparagraph 11.1.b shall also apply to any person employed as a chief procurement officer or director of procurement.

**§133-30-12. Receiving and Inventory Management.**

12.1. Receiving.

12.1.a. The chief procurement officer or director of procurement shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services, and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with this rule, and they shall be approved by the president, filed with the Vice Chancellor for Administration and shall be on file in the institution's purchasing office and made available to the public upon request.

12.2. Inventory Management.

12.2.a. The chief procurement officer or director of procurement shall inventory all equipment and furnishings that have a value at the time of purchase or acquisition of \$5,000 or more per unit. Such inventory shall be kept current at all times. An institution may elect to inventory equipment and furnishings with a value less than \$5,000 per unit.

12.2.b. The chief procurement officer or director of procurement shall set up and maintain the institution's inventory management system on the basis of generally accepted accounting standards. This system shall also conform to the requirements of the Commission, Council, the Governing Board, the state and the federal government as applicable.

12.2.c. The chief procurement officer or director of procurement shall conduct an audit of the institution's inventory, at a minimum, every three years.

**§133-30-13. Disposal of Surplus or Obsolete Materials, Supplies and Equipment.**

13.1. The chief procurement officer or director of procurement shall identify and inventory the institution's surplus or obsolete materials, supplies and equipment and shall store such materials, supplies and equipment until such time as they may be disposed of in a manner consistent with this rule and state law.

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13.2. An institution may dispose of surplus or obsolete materials, supplies and equipment by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.

13.3. If the method of disposition is other than by transfer to, or exchange or trade with other governmental agencies or institutions, the chief procurement officer or director of procurement shall, at least ten days prior to the disposition, advertise once a week for two consecutive weeks by newspaper publication as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 et. seq., in the county where the surplus or obsolete materials, supplies and equipment are located, their availability or sale, in whole or part, at public auction or by sealed bid, as sound business practices may warrant under existing circumstances and conditions.

13.4. An institution may also dispose of surplus or obsolete materials, supplies and equipment through the surplus property unit of the Purchasing Division of the West Virginia Department of Administration; in which case, all of the rules and regulations of the Department of Administration shall be followed.

13.5. Under no circumstances shall any of the property described in this section be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in West Virginia Code §18B-5-7.

13.6. The funds an institution receives from the sale of surplus materials, supplies, and equipment shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds from which the purchase of the particular commodities or expendable commodities was made. The Commission, Council or Governing Board may charge and assess reasonable fees related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property that is disposed of or sold.

### **§133-30-14. Violations.**

14.1. Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Commission, Council and the Governing Board shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.

14.2. Any person receiving anything of value from a known interested party in the awarding of a purchase order shall be subject to the provisions of West Virginia Code §5A-3-28, -29, -30, -31.

14.3. Except as may be authorized by the provisions of Chapter 6B of the West Virginia Code, neither the Commission, Council or a Governing Board, nor any employee of the Commission, Council or a Governing Board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the Commission, Council or a Governing Board nor any employee of the Commission, Council or a Governing Board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Commission, Council, Governing Board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

14.4. Any vendor violating the West Virginia Code or this rule may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.

### **§133-30-15. Performance Audits.**

15.1. The Joint Committee on Government and Finance is required by West Virginia Code to conduct performance audits and the Commission or Governing Board shall be responsible for paying the cost of the audit from funds appropriated to the Commission or Governing Board.

15.2. The Commission also has an obligation under West Virginia Code to conduct performance audits of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education and report to the Legislative Oversight Commission on Education Accountability (LOCEA) on the results of the performance audits, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the institutions and the Commission.

**§133-30-16. Permitting Private Institutions of Higher Education to Join as Purchasers.**

16.1. The Commission and Governing Boards shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, equipment, services, and printing entered into by the Commission and Governing Board or the institutions under the Board's control. Any private school desiring to join as a purchaser on such purchase contracts shall file with the Vice Chancellor for Administration an affidavit signed by the president of the institution of higher education or a designee, requesting that it be authorized to join as a purchaser on such contracts, and agreeing that it will be bound by such terms and conditions as the Commission or Governing Board may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.



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

**SERIES 31  
ETHICS**

**SECTION 1. GENERAL**

- 1.1 Scope - This rule establishes guidelines for institutional governing boards in adopting policies in accordance with the West Virginia Governmental Ethics Act.
- 1.2 Authority - West Virginia Code § 18B-1-6, 6B-2-5(L)
- 1.3 Filing Date – July 2, 2002
- 1.4 Effective Date – August 1, 2002
- 1.5 Preamble - In 1989, the West Virginia Legislature enacted the West Virginia Governmental Ethics Act, set out in Chapter 6B of the West Virginia State Code, declaring unlawful certain activities by public employees. Section 5(b), Article 2 of the Act prohibits a public employee from using his or her office or the prestige of that office for his or her private gain or that of another person. Section 5(c), Article 2 prohibits solicitation of gifts that may confer pecuniary benefits upon the employee or his or her immediate family. Section 5(d), Article 2 prohibits an interest in the profits or benefits of a public contract which an employee has direct authority to enter into or over which he or she may have control.

The original version of the Ethics Act subjected all public employees, including higher education employees, to fines, sanction, and criminal prosecution for violation of the Ethics Act unless they obtained prior approval for the proposed activity from the West Virginia Ethics Commission. Many of the teaching, research, consulting and publication activities of higher education faculty and staff necessarily result in known and appropriate private benefits or gain which are customary and normal in higher education, but which were identified as potential violations of these provisions of the Ethics Act after its enactment.

In 1990, the Ethics Act was amended at Section 5(l), Article 2 to allow higher education employees who derive private benefits from teaching, research, consulting, or publication activities the option of seeking exemption from the above prohibitions from their employing institution instead of through the Ethics Commission.

The previous Board of Trustees and Board of Directors adopted a rule to set forth an expeditious procedure for granting such approval of

exemptions at the institutional level to faculty and staff members who sought to be relieved of certain statutorily imposed prohibitions of the West Virginia Governmental Ethics Act. The Policy Commission has previously transferred that rule to the jurisdiction of the institutional governing boards. This rule shall govern any modification of that rule by a governing board.

- 1.6 Repeal of Former Rule - Repeals and replaces Series 43 of Title 128 and 131.

## **SECTION 2. APPROVAL OF ACTIVITY**

- 2.1 Any rule governing ethics of its faculty or staff adopted by an institutional governing board shall include at least the following:
  - 2.1.1 That institutional approval of any activity pursuant to the rule shall be deemed to be a part of the employee's employment contract with the board.
  - 2.1.2 That any institutional approval granted pursuant to the rule may be revoked upon reasonable notice to the employee.
  - 2.1.3 That approval for any activity pursuant to this rule may only be given by an institution's president or the president's designee or designees. Such delegation of authority by a president shall be in accordance with the needs of the institution but in no case shall such delegation be at an authority level lower than a departmental chair, director or other similar department supervisor.
  - 2.1.4 That approval for any activity may be granted on a case-by-case basis or, when such activities are common within an institution, a department or other category or grouping of employees, to all of an institution's employees or any subgrouping thereof.
  - 2.1.5 That the institution shall establish appropriate procedures for the review and approval of those employee activities covered by this rule.
  - 2.1.6 That disclosures required by the rule are personal in nature and shall be kept confidential, as permitted by law.

### **SECTION 3. SOLICITATION OF GIFTS**

- 3.1 Any such rule shall also include provisions that state:
  - 3.1.1 Unless otherwise restricted by one's supervisor, employees shall be permitted to solicit gifts which directly benefit the board or the employing institution. Solicitations on behalf of a particular department, on behalf of the institution's supporting foundation or on behalf of an affiliated corporation or center shall, for the purposes of the rule, be deemed to be a solicitation on behalf of or for the benefit of the institution.
  - 3.1.2 Permissible solicitations shall include but not be limited to the following, even though the soliciting employee may work in a position which will be directly or indirectly supported thereby:
    - 3.1.2.1 Grants from governmental agencies, foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution;
    - 3.1.2.2 Contracts with governmental agencies, foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution;
    - 3.1.2.3 Donations from foundations, corporations, or individuals to the institution to support teaching, research, publication or service activities of the institution.
  - 3.1.3 Support for teaching, research, publication and service activities shall include but not be limited to such normal and regular institutional needs as support for salaries; scholarships; capital improvements or repairs; and classroom, laboratory, athletic, medical, scientific, and other similar equipment supplies.

### **SECTION 4. USE OF PUBLIC OFFICE FOR PRIVATE GAIN**

- 4.1 Any such rule shall also provide that:
  - 4.1.1 No solicitation or other activity permitted by the rule shall be deemed to be the inappropriate use of an employee's public office (position) or the prestige of that office for one's own private gain or that of another person.

- 4.1.2 When an employee uses his or her knowledge and personal prestige for private gain without the use of the employee's public office, then there is no requirement to obtain an exemption under the ethics rule.
- 4.1.3 W. Va. Code § 6B-2-5(l) gives institutions of public higher education limited authority to grant exemptions to their employees from the prohibitions in the State Ethics Act relating to the use of public office or the prestige of public office for private gain when the employee is using his or her field of expertise as an author, speaker, consultant or through other approved activities such as service as a board member for outside agencies or businesses and when an employee of the institution seeks to use his or her public office or the prestige of their public office for the employee's private gain or for the private gain of another person, the employee may seek from an appropriate institutional authority an exemption (as limited by the Ethics Act) from the prohibition against the use of public office or the prestige of public office for private gain.
- 4.1.4. The appropriate institutional authority may grant the employee an exemption to permit the employee to use the employee's public office to derive private benefit from the employee's field of expertise as an author, speaker, consultant, or through other approved activities such as service on the board of an outside agency or business.
- 4.1.5 In granting permission for an employee to engage in such outside activities which may be directly or indirectly associated with the employee's position with the institution, consideration should be given to the following:
  - 4.1.5.1 Whether the employee brings to his/her position his/her own unique personal prestige which is based upon his/her own intelligence, education, experience, skills and abilities, or other personal gifts or traits.
  - 4.1.5.2 Whether such activity is customary and usual within the field;
  - 4.1.5.3 Whether the institution derives any benefit through prestige or otherwise from the activity;
  - 4.1.5.4 Whether the institution expects or anticipates that the employee will gain financially from the activities which are not a part of the employee's required employment activities;

4.1.5.5 Whether the employee's activity will increase his/her personal or professional development or will lend service or benefit to the nation, state or community;

4.1.5.6 Whether the outside activity will interfere with or create an overriding conflict with the employee's responsibility to the institution or will interfere with the satisfactory performance of the employee's institutional duties.

4.1.6 The disclosure by an employee of an employee's position, title, and work history with the institution in the promotion of an employee's private activities shall be exempt from the prohibition against the use of prestige of public office for a private gain. However, in these cases the employee has the responsibility to make clear the fact that he or she is not representing the institution but is speaking as a private citizen.

4.1.7 An employee who obtains an exemption from the Ethics Act prohibitions under the procedure authorized in this rule shall not be deemed an agent of the institutions when the employee is acting outside the scope of his or her other employment for his or her private benefit.

4.1.8 No exemption granted under this ethics rule shall be deemed to constitute a waiver by the institution of any lawful contractual provision in the employment contract of a full or part-time employee of the institution.

## **SECTION 5. INTERESTS IN PUBLIC CONTRACTS**

5.1 Any such rule shall also provide that:

5.1.1 Each employee shall be required to disclose any interest the employee or any member of the employee's immediate family or a business with which he or she is associated may have in the profits or benefits of a contract which the employee may have direct authority to enter into or over which the employee may have control unless such interest is limited within the meaning of West Virginia Code 6B-2-5(d)(2).

5.1.2 The institution may review any interest an employee or any member of the employee's family or a business with which he or she is associated may have and determine what, if any, restrictions or limitation should be placed on the employee's activities.

## **SECTION 6. ADDITIONAL ETHICAL STANDARDS**

- 6.1 A governing board may establish additional ethical standards for its employees not inconsistent with this rule or the West Virginia Governmental Ethics Act.

## **SECTION 7. PRESIDENTS**

- 7.1 The chair of a governing board shall have the authority to review and grant approval of those activities of the institution's president which may involve a conflict of interest pursuant to this rule or the institution's rule.

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

**SERIES 38  
EMPLOYEE LEAVE**

**SECTION 1. GENERAL**

- 1.1 Scope - Rule regarding annual leave, military leave, leave of absence without pay, sick leave, special emergency leave, catastrophic leave, parental leave, and witness and jury leave for employees of the Higher Education Policy Commission.
- 1.2 Authority - West Virginia Code § 18B-1-6
- 1.3 Filing Date - October 20, 1992
- 1.4 Effective Date - November 19, 1992

**SECTION 2. GENERAL LEAVE COVERAGE**

- 2.1 Eligibility for annual and sick leave shall be based on the following:
  - 2.1.1 Employees working on a regular and continuing basis for no less than 1950 hours within a twelve (12) consecutive month period are considered to be full-time employees and are eligible for leave as specified in this document.
  - 2.1.2 Employees working between 1,040 hours and less than 1,950 on a regular and continuing basis during a twelve (12) consecutive month period shall accumulate leave on a pro rata basis.
  - 2.1.3 Employees working less than 1,040 hours are not eligible for leave benefits.
- 2.2 Faculty members on twelve-month appointments are defined as full-time employees and accrue leave according to the appropriate sections of this rule. The provisions of this rule related to annual leave, sick leave, catastrophic leave, special emergency leave, and managing work time in areas affected by interruption to utility or similar situations do not apply to faculty members on annual appointments of less than twelve months.

- 2.3 Annual and sick leave may not be taken before it is accrued. If an employee works less than a full month, annual and sick leave shall be accumulated on a pro rata basis.
- 2.4 During a terminal leave period, no type of leave may be accrued. Terminal leave is the period following the last day of scheduled work from employment such as resignation, retirement, etc.
- 2.5 Length of service shall be total years of service which includes experience with state institutions of higher education and other state agencies. Continuous service is not required to complete the required term. Annual appointment periods of nine (9) months or more shall be credited for one (1) year of service for annual leave calculation purposes.
- 2.6 A recognized institutional holiday occurring during an employee's leave period shall not be considered as a day of leave, provided the employee is not in a terminal leave period.
- 2.7 Up to fifteen (15) days of annual leave may be transferred from other agencies of state government and state higher education institutions to other higher education institutions. Certification of the balance which existed in the agency or institution from which the employee is transferring must accompany the request for transfer and bear the signature of an officer of that agency. A request for transfer must be made within one (1) year from the last day of employment with the other agency or institution.
- 2.8 When an employee transfers from other agencies of state government or from other state institutions of higher education to another institution, the employee's accumulated sick leave may be transferred. Written verification of the accumulated amount of sick leave to be transferred must be provided by the state agency or institution of higher education wherein the employee accumulated the sick leave within one (1) year of the date of employment with the institution.
- 2.9 An employee is required to notify her/his supervisor immediately if ill or unable to work for any reason and to follow the institution's established procedures for absences from work. The notification shall be given to the immediate supervisor or designee, as determined by established procedures of the institution.
- 2.10 Employees on leave of absence without pay shall not accrue annual or sick leave or years of service credit for any and all full months in which they are off the payroll.
- 2.11 Each institution shall keep on file a record showing current leave status of each employee.



### **SECTION 3. ANNUAL LEAVE**

- 3.1 Full-time non-classified employees and faculty with twelve-month appointments shall be eligible for up to twenty-four (24) days leave per year calculated at the rate of 2.00 days per month from the date of employment. However, upon leaving a non-classified position, the accumulation rates outlined in Section 3.2 shall apply.
- 3.2 Employees occupying full-time classified positions shall be eligible for annual leave on the following basis:
  - 3.2.1 Less than 5 years' service: 1.25 days per month;
  - 3.2.2 5 but less than 10 years' service: 1.50 days per month;
  - 3.2.3 10 but less than 15 years' service: 1.75 days per month;
  - 3.2.4 15 or more years' service: 2.00 days per month.
- 3.3 Employees working at least 1,040 hours per twelve (12) consecutive months on a regular and continuing basis, but less than 1,950 hours shall accumulate annual leave on a pro rata basis.
- 3.4 Accumulated annual leave for continuing employees may be extended beyond that earned during a period of one (1) year by written approval of the president or her/his designee, but in no case shall it exceed twice the amount earned in any twelve-month period.
- 3.5 An employee is entitled to accumulated leave at termination of service, but in no case may this exceed the limits set in 3.4 above.

### **SECTION 4. OTHER CONDITIONS FOR ANNUAL LEAVE**

- 4.1 At the request of the employee through established procedures, annual leave may be granted because of illness.
- 4.2 The work requirements of the institution shall take priority over the scheduling of annual leave or other leave for an employee. When operationally possible, the supervisor shall grant earned annual leave at the convenience of the employee. However, departmental needs must be met, and annual leave may not be taken without prior request and approval of the employee's supervisor.
- 4.3 In the event of an employee's death, the value of accumulated annual

leave will be paid to the employee's estate.

## **SECTION 5. SICK AND EMERGENCY LEAVE**

- 5.1 Full-time employees shall accumulate sick leave at the rate of 1.5 days per month. All other employees shall accumulate sick leave in accordance with Section 2.1 of this rule.
- 5.2 Sick leave may be accumulated without limit.
- 5.3 Sick leave may be used by the employee when ill or injured or when in need of medical attention or when death occurs in the immediate family.
- 5.4 An employee may use sick leave for a member of the immediate family who is ill, injured, or in need of medical attention. Immediate family is defined as: father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, step children, or others considered to be members of the household and living under the same roof.
- 5.5 Sick leave for more than five (5) consecutive days shall not be granted to an employee for illness without satisfactory proof of illness or injury, as evidenced by a statement of the attending physician or by other proof satisfactory to the institution. An employee having an extended illness or serious injury shall, before returning to duty, obtain satisfactory medical clearance to help ensure adequate protection and shall indicate the employee's ability to perform her/his duties. Such medical clearance shall be presented in writing.
- 5.6 The institution may require evidence from an employee for verification of an illness or other causes for which leave may be granted under this rule, regardless of the duration of the leave.
- 5.7 In cases, except those involving catastrophic sick leave as defined in Section 8.1, where all accumulated sick leave has been used and annual leave is available, it shall be the option of an employee either to use any accumulated annual leave until it has also expired, rather than being removed from the payroll, or to retain the accumulated annual leave for use after return to work, but be taken off the payroll immediately after the accumulated sick leave has expired.
- 5.8 On-the-job injuries or occupational illnesses which involve no more than three (3) days of disability leave or absence from work shall not be charged against the employee's accumulated sick leave as long as they are the next three (3) consecutive working days after injury or illness

occurred. If on-the-job injuries or illnesses require a leave beyond the three-day period, it shall be the option of the employee either to use earned and accumulated sick and annual leave until both may be exhausted or to reserve for future use any earned and accumulated sick and annual leave and receive only Workers' Compensation benefits for which adjudged eligible.

- 5.9 Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom shall be, for all job-related purposes, temporary disabilities and shall be treated the same as any other illness or disability would be treated for sick leave entitlement. For this reason, employees shall be entitled to sick leave for their disabilities related to pregnancy and childbirth on the same terms and conditions as they or other employees would be entitled for other illnesses and disabilities. In determining whether an employee is unable to work because of a disability related to pregnancy or childbirth, the same criteria shall be used as would be used in the case of another type of illness or disability.
- 5.10 Sick leave provisions are contingent upon continued employment. When the services of an employee have terminated, all sick leave credited to the employee shall be considered cancelled as of the last working day with the institution, and no reimbursement shall be provided for unused sick leave except in the event of retirement, in which case sick leave may be converted to insurance coverage or for provisions lawfully provided for at that time. Employees who resign in good standing and are later reemployed may have their total accumulated sick leave reinstated, provided the date of termination is one (1) year or less from the date of reemployment. However, if the employee returns to work after more than one (1) year from the date of termination, no more than 30 days of accumulated sick leave may be reinstated.

## **SECTION 6. MEDICAL LEAVE OF ABSENCE WITHOUT PAY**

- 6.1 Any employee requesting a medical leave of absence without pay must provide the institutional president or the president's designee, through established procedures, with satisfactory medical evidence (such as a statement from the attending physician) that he/she is unable to work. The medical statement shall include a diagnosis, prognosis, and expected date that the employee can return to work. If the evidence is satisfactory, the president or her/his designee may authorize a medical leave of absence without pay only for the period of disability specified by the attending physician.
- 6.2 The employee shall be expected to report to work on the first workday following expiration of the disability period. Failure of the employee to report promptly at the expiration of a medical leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of employment by the institution. An employee, prior to return to duty, shall obtain satisfactory medical clearance to help ensure adequate protection and which shall indicate the employee's ability to

perform her/his duties. Such medical clearance shall be presented in writing.

- 6.3 A medical leave of absence without pay may be granted for no more than a twelve (12) consecutive month period. Employees who may need an extended medical leave beyond twelve (12) consecutive months may apply for an extension through institutional procedures or may consider other options, such as disability.
- 6.4 After an employee has taken a twelve-month medical leave, the institution shall continue group health insurance coverage provided that the employee pays the institution the full premium cost of such group health plan.
- 6.5 Any employee who is separated from employment following a medical leave of absence of twelve (12) consecutive months and who had chosen to maintain her/his accumulated annual leave will receive payment for such accumulated annual leave in a lump sum payment.

## **SECTION 7. PARENTAL LEAVE**

- 7.1 A full-time employee who has worked at least twelve (12) consecutive weeks for the state may request up to twelve (12) weeks unpaid parental leave.
- 7.2 The request must be due to birth or adoption by the employee or because of a planned medical treatment or care for the employee's spouse, son, daughter, parent, or dependent who has a serious health condition.
- 7.3 The employee must provide her/his supervisor with written notice two (2) weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a written request may be cause for denial.
- 7.4 The employee must provide the employer with certification by the treating physician and/or documentation regarding dependency status.
- 7.5 All annual leave must be exhausted before the parental leave begins. No more than a total of twelve (12) weeks of parental leave may be taken in any twelve (12) consecutive month period.
- 7.6 During the parental leave by an employee, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium cost of such group health plan.

- 7.7 The position held by the employee immediately before the leave is commenced shall be held for a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position. However, the institution may employ a temporary employee to fill the position for the period of the parental leave.

## **SECTION 8. CATASTROPHIC LEAVE**

- 8.1 Catastrophic leave is provided for employees and a catastrophic illness is defined as: a medically verified illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee has exhausted all leave and other paid time off. Catastrophic illness or injury shall also include an incapacitated immediate family member if this results in the employee being required to take time off from work to care for the family member and the employee has exhausted all leave and other paid time off.
- 8.2 Each institutional president and the Chancellor of the Higher Education Policy Commission will have the option to establish a leave bank and/or a procedure for direct transfer of sick or annual leave to an employee who has requested and been approved to receive leave donations due to a catastrophic illness or injury. The institution may develop procedures which limit the amount of deposits an employee may make in any twelve (12) continuous month period.
- 8.3 A catastrophic leave bank provides for the deposit of sick and annual leave into a "bank" from which employees approved for catastrophic leave may withdraw leave.
- 8.4 A direct transfer provides for sick and annual leave to be donated at the request of the employee upon appropriate medical verification that the individual is unable to work due to the catastrophic illness or injury as determined by the president of the institution or the Chancellor of the Higher Education Policy Commission.
- 8.4.1 Upon approval for an employee to receive direct transfer of catastrophic leave, any employee may, upon written notice to the human resources department, donate sick and/or annual leave in one-day increments. No employee shall be compelled to donate sick leave. Any leave donated by an employee, but not used by the employee to whom it was donated, shall be returned to the donating employee and reflected in her/his leave balance.
- 8.5 An employee receiving the transfer of leave shall have any time which is

donated credited to such employee's leave record in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee. The leave record of the donating employee shall have the donated leave reflected as a day-for-day reduction of the leave balance.

- 8.6 Use of donated credits may not exceed a maximum of twelve (12) continuous calendar months for any one catastrophic illness or injury. The total amount of leave received by transfer or withdrawn from a bank may not exceed an amount sufficient to ensure the continuance of regular compensation and shall not be used to extend insurance coverage pursuant to Section 13, Article 16, Chapter 5 of the Code, which relates to insurance coverage for state employees. The employee receiving donations of leave shall use any leave personally accrued on a monthly basis prior to receiving additional donated leave.
- 8.7 Direct transfer of leave or deposits into a leave bank may be inter-institutional. The president or her/his designee shall notify in writing other institutional presidents requesting that the institution consider the transfer of leave by either the direct transfer method or from the institution's leave bank. Upon approval of the receiving president, transfer leave will be made through appropriate institutional procedures.
- 8.8 Each institution and the higher education policy commission office shall be responsible for the administration of catastrophic leave and shall develop and disseminate procedures for the administration of this policy.

## **SECTION 9. PERSONAL LEAVE OF ABSENCE WITHOUT PAY**

- 9.1 An employee, upon application in writing and upon written approval by the institutional president or her/his designee, may be granted a continuous leave of absence without pay for a period of time not to exceed twelve (12) consecutive months provided all accrued annual leave has been exhausted.
- 9.2 The president or the president's designee, at her/his discretion, may require the written approval of the supervisor before accepting the written application of an employee for a leave of absence without pay.
- 9.3 The president or the president's designee, at her/his discretion, shall determine if the purpose for which such a leave is requested is proper and within sound administrative policy.
- 9.4 At the expiration of leave of absence without pay, the employee shall be reinstated without loss of any rights, unless the position is no longer available due to a reduction in staff caused by curtailment of funds or a reduced workload. Failure of the employee to report promptly at the expiration of a leave of absence without pay, except for satisfactory reasons submitted in advance, shall be cause for termination of

employment by the institution.

- 9.5 During a personal leave, the institution shall continue group health insurance coverage provided that the employee pays the employer the full premium costs of such group health plan.

## **SECTION 10. MILITARY LEAVE**

- 10.1 An employee who is a member of the National Guard or any reserve component of the armed forces of the United States shall be entitled to and shall receive a leave of absence without loss of pay, status, or efficiency rating, for all days in which engaged in drills or parades ordered by proper authority, or for field training or active service for a maximum period of thirty (30) working days ordered or authorized under provisions of state law in any one (1) calendar year. The term "without loss of pay" shall mean that the employee shall continue to receive normal salary or compensation, notwithstanding the fact that such employee may receive other compensation from federal sources during the same period. Furthermore, such leave of absence shall be considered as time worked in computing seniority, eligibility for salary increased, and experience with the institution. An employee shall be required to submit an order or statement in writing from the appropriate military officer in support of the request for such military leave.
- 10.2 Benefits of this section shall accrue to individuals ordered or called to active duty by the President of the United States for thirty (30) working days after they report for active service.

## **SECTION 11. SPECIAL EMERGENCY LEAVE WITH PAY**

- 11.1 Special emergency leave with pay may be granted by the president of the institution or her/his designee to full-time employees in the event of extreme misfortune to the employee or the immediate family. The leave should be the minimum necessary, and in no case may it exceed five (5) days within any twelve (12) consecutive month period. Typical events which may qualify an employee for such leave are fire, flood, or other events (other than personal illness or injury or serious illness or death in the immediate family) of a nature requiring emergency attention by the employee.

## **SECTION 12. WITNESS AND JURY LEAVE**

- 12.1 Upon application in writing, an employee of the a higher education institution or the Higher Education Policy Commission may be granted

leave as indicated hereinafter in this section provided the employee is not a party to the action. Annual leave will not be charged under the provisions of this section.

- 12.2 When, in obedience to a subpoena or direction by proper authority, an employee appears as a witness for the Federal Government, the State of West Virginia, or a political subdivision thereof, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.3 When attendance in a court is in connection with an employee's usual official duties, time required in going and returning shall not be considered as absence from duty.
- 12.4 When an employee serves upon a jury, or is subpoenaed in litigation, the employee shall be entitled to leave with pay for such duty and for such period of required absence.
- 12.5 The employee shall report to work if he/she is excused by the court before the end of her/his regular work day. Provisions for employees who work a shift other than day shift shall be made according to institutional policy.

**SECTION 13. MANAGING WORK TIME IN AREAS AFFECTED BY INTERRUPTION TO UTILITY SERVICE OR SIMILAR SITUATIONS**

- 13.1 Utility Service Interruptions - When extended power and utility service interruptions occur, administrators should make arrangements for employees' usual work routine to be accomplished at alternate work locations, or make affected employees available to other administrators for work in other areas. Also, if an administrator deems it advisable and the employee agrees, time off during the utility service interruption may be granted and charged against an employee's accumulated annual leave. Combinations of the above alternatives may be necessary, but in all cases interruptions of work schedules must be dealt with in accordance with applicable laws, including West Virginia Code 12-3-13. This law is interpreted to mean that if pay is associated with the absence from work, the absence must be charged to accumulated annual leave.
- 13.2 Emergency Situations - In the event that an emergency exists, the president, in conjunction with local or state public safety officials, has the authority to comply with the emergency situation and close the institution. Such a declaration will be transmitted to the chancellor of the Higher Education Policy Commission. The president, working with public safety officials, will determine when the emergency condition no longer exists. Should an employee be required to work by the president or her/his designee during a declared emergency, the time worked shall be



compensated according to the provisions of Series 8. Work time lost by any employee during a declared emergency will be considered regular work time for pay purposes and will not require that the time be charged to annual leave nor will there be a requirement that the time be made up.

- 13.3 Absences from work due to weather conditions other than during a declared emergency must be charged against accumulated annual leave, accumulated compensatory time, or the employee must be removed from the payroll for the time in question. Where institutions employ the "floating holiday" concept, the holiday record may be charged. Sick leave may not be charged for absence due to weather. Time lost from work may be made up in the same work week at the discretion of the employee's supervisor.

**TITLE 133**  
**PROCEDURAL RULE**  
**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**  
  
**SERIES 40**  
**EQUAL OPPORTUNITY and AFFIRMATIVE ACTION**

**§133-40-1. General.**

1.1. Scope. -- This rule establishes equal opportunity and affirmative action policy.

1.2. Authority. -- West Virginia Code §18B-1-6 and §18B-1B-5.

1.3. Filing Date. -- October 31, 2019.

1.4. Effective Date. -- December 1, 2019.

1.5. Repeal of Former Rule. -- Repeals and replaces Title 133, Series 40 which had an effective date of November 7, 2013.

**§133-40-2. General Policy.**

2.1. It shall be the policy of the West Virginia Higher Education Policy Commission (Commission) to provide equal employment opportunities to all qualified employees and applicants and to prohibit discrimination or harassment against any such individuals on the basis of protected characteristics. The Commission considers race, color, religion, sex/gender, national origin, ancestry, age, blindness, disability, pregnancy, genetic information, sexual orientation, gender identity, veteran or military status or other category that is protected under federal, State, or local anti-discrimination laws as protected characteristics and will not permit discrimination or harassment against any employee or applicant for employment on the basis of any such characteristic. The Commission will conform both to the letter and the spirit of the law and regulations with respect to prohibiting any such discrimination or harassment and will encourage and support voluntary affirmative action where necessary to ensure that institutions employ, advance in employment and treat all qualified persons without discrimination in any employment practices.

2.2. The scope of this policy prohibiting discrimination and harassment extends, but is not limited to, the following: recruitment, employment, promotion, transfer, training, working conditions, wage and salary administration, benefits, discipline, promotion, transfer, layoff, termination processes, and the application of all other employment-related policies. These principles of non-discrimination and anti-harassment also apply to the selection and treatment of independent contractors, personnel working on Commission premises, and any other persons or firms doing business with the Commission.

2.3. Under the Commission's additional authority to allocate specified functions and responsibilities among the institutions within the jurisdiction of the Commission, each institution shall accept primary and long-term responsibility for the development and implementation of equal employment opportunity and where necessary, affirmative action policies consistent with the Commission's guidance and all applicable laws and regulations.

2.4. Each institution and the Commission shall take the initiative in developing or modifying their own plans to achieve compliance with the equal employment opportunity and affirmative action policy of the Commission as well as those of the State and federal governments. The president of each institution

shall, through appropriate means, establish and maintain a positive program of equal employment opportunity and affirmative action within her/his jurisdiction in accordance with all laws and regulations applicable to the institution. The equal employment opportunity and affirmative action goals of the institution must be integrated into and consistent with other performance goals of the institution. The realistic goals and timetables of each institution shall be vigorously pursued to achieve a proportional representation of minorities and women in the workforce based on availability within the relevant workforce recruitment markets. The effective pursuit of affirmative action requires not only the adoption of an adequate plan, but also results-oriented procedures designed to ensure the involvement of managers at all levels of each institution.

**TITLE 133**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**  
  
**SERIES 55**  
**HUMAN RESOURCES ADMINISTRATION**

**§133-55-1. General.**

1.1. Scope. -- This rule establishes policy in a number of areas regarding human resources administration for the employees of the West Virginia Higher Education Policy Commission (Commission) and the public higher education institutions in West Virginia under the jurisdiction of the Commission. It also provides guidelines for governing boards relative to decisions pertaining to public higher education employees.

The primary responsibility for implementation rests with the Commission, in consultation with the West Virginia Council for Community and Technical College Education (Council), who shall provide leadership and assistance to the human resources professionals, presidents and boards of governors of each organization to bring about the changes successfully and to support the human resources function of each organization.

1.2. Authority. -- West Virginia Code §18B-1B-6, §18B-4-2a, §18B-7, §18B-8, §18B-9A and §18B-9B.

1.3. Filing Date. -- June 4, 2018.

1.4. Effective Date. -- June 4, 2018.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on June 4, 2023.

**§133-55-2. Purpose.**

2.1. The intent of this rule is to establish human resources policies applicable to public higher education capable of, but not limited to, meeting or assisting the governing boards in the following objectives.

2.1.a. Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

2.1.b. Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;

2.1.c. Addressing fiscal responsibility by making the best use of scarce resources and promoting fairness, accountability, credibility and transparency (FACT) in personnel decision-making;

2.1.d. Providing for job requirements and performance standards for classified staff positions, with annual job performance evaluations for classified staff and provisions for job performance counseling when appropriate;

2.1.e. Building upon human resources best practices to prevent, reduce, or, wherever possible, eliminate arbitrary and capricious decisions affecting employees of higher education organizations;

2.1.f. Creating stable, self-regulating human resources policies capable of evolving to meet changing needs;

2.1.g. Providing for institutional flexibility with meaningful accountability;

2.1.h. Adhering to federal and state laws, promulgated and adopted rules;

2.1.i. Enhancing the sharing of human resources best practices throughout the state higher education system;

2.1.j. Encouraging organizations to pursue a human resources strategy which provides monetary and non-monetary returns to employees in exchange for their time, talents, and efforts to meet articulated goals, objectives and priorities of the State, the Commission and the organization;

2.1.k. Maximizing the recruitment, motivation and retention of highly qualified employees, promoting satisfaction and engagement of employees with their jobs, promoting job performance and achieving desired results;

2.1.l. Requiring each higher education organization under the jurisdiction of the Commission to achieve full funding of the salary schedule minimum salary levels for classified employees, providing funding is available;

2.1.m. Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

2.1.n. Developing and implementing a classification and compensation system that is fair, transparent, understandable, easy to administer, self-regulating, and adaptable to meet future goals and priorities; and

2.1.o. Providing current, reliable data to governing boards, the Commission, the Council, the Governor and the Legislature to inform the decision-making process of these policymakers.

**§133-55-3. Definitions.**

3.1. The definitions related to higher education human resources administration are outlined in the attached document, Appendix A.

**§133-55-4. Types of Employment and Benefit Eligibility.**

4.1. Casual Employee. A casual employee position is a position created to meet business needs for no more than 450 hours in a twelve-month period. Individuals in a casual employee position are not eligible for benefits.

4.2. Full-Time Regular Employee. Any employee in a position created to last a minimum of nine months of a twelve-month period and in which such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. Such an employee is eligible for all applicable benefits of a full-time regular employee, subject to the qualifying conditions of each benefit. Such benefits shall be prorated in relation to a 1.00 FTE.

4.3. Part-Time Regular Employee. An employee in a position created to last less than 1,040 hours during a twelve-month period. Part-time regular positions typically continue from one fiscal year to another. An employee in a part-time regular position is not eligible for benefits.

4.4. Temporary Employee. An employee hired into a position expected to last fewer than nine months of a twelve-month period. Temporary employees may be part-time temporary or full-time temporary. A temporary employee is not eligible for benefits.

4.5. Although part-time, casual, temporary and student employees are not eligible for higher education benefit programs, institutions are cautioned to monitor average hours worked per week to identify situations where eligibility for health insurance is triggered and compliance with the federal Affordable Care Act (ACA) is required. No number of ACA eligible periods of part-time, temporary, casual or student employment shall create any presumption of a right to appointment as a full-time or part time regular employee.

4.6. Any employee may elect to enroll and contribute wages to a 403(b) tax deferred retirement savings account. Enrollment is voluntary and 403(b) deferrals are not matched by the employer. Election to defer wages to a retirement savings account shall not create any presumption of a right to appointment as a full-time or part-time regular employee.

### **§133-55-5. Employee Categories.**

5.1. Higher education employees are segmented into one of the following categories or classes. Employees in each category may be full-time or part-time or regular or temporary.

5.1.a. Classified Employee. Any regular full-time or regular part-time employee of an organization who does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and is not otherwise a nonclassified employee.

5.1.b. Faculty Employee. Faculty employees are appointed at the discretion of the institutional president or designee to support the academic mission of the institution, via teaching, research, public service, and or academic administration. A full time faculty member is an employee appointed to render full time academic service for a full academic year under a nine-month minimum appointment for at least six (6) semester credit hours teaching per semester or the equivalent in teaching, research, public service, and/or administrative responsibilities.

5.1.c. Nonclassified Employee. Nonclassified employees, unless otherwise established by action of the organization or institution where employed, serves at the will and pleasure of the organization, which authority may be delegated by act of the governing board or the Commission. To be designated as nonclassified, the employee must meet one or more of the following criteria:

5.1.c.1. Employee holds a direct policy-making position at the department or organization level;

5.1.c.2. Employee reports directly to the president or chief executive officer of the organization;

5.1.c.3. Employee is in a position considered by the chancellor, president or designee to be critical to the organization pursuant to policies or decisions adopted by a governing board;

5.1.c.4. Employee in an information technology-related position which may be defined by policies or decisions adopted by a governing board;

5.1.c.5. Employee hired after July 1, 2017 in a position that meets the duties test for exempt status under the provisions of the Fair Labor Standards Act when hired or anytime thereafter; or

5.1.c.6. An employee in a nonclassified position as of January 1, 2017 who may not meet criteria listed in subsections 5.1.c.1. through 5.1.c.5. of this rule.

5.1.d. Student Employee. An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. The employee category of “student employee” is for students who work at the institution in jobs or positions that are solely available to students enrolled at the institution, as opposed to the general public. When the student worker is no longer enrolled he/she is no longer eligible to work in the student worker position. A student employee is not eligible for benefits.

### **§133-55-6. Part-Time and Temporary Employees.**

6.1. Institutions are discouraged from hiring part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all classified employees with less than twelve month appointments with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment, provided the classified employee meets the established position qualifications.

6.2. Change in status. The president or his/her designee will review and make a final determination as to the status or change in status of any employee. Determination of status or change in status means assignment to, or change in the type of employment or the category to which an employee is assigned.

6.3. When the president or his/her designee determines that a part-time regular employee becomes a full-time regular employee, he/she shall credit that employee's previous service toward any calculation of length of service for purposes of this rule and benefit eligibility based upon a prorated comparison against a 1.00 FTE. Previous length of service as temporary, casual, and student employees shall not be credited toward seniority calculations under other sections of this rule or statute.

### **§133-55-7. Workweek.**

7.1. The standard workweek is thirty-seven and one-half hours. The workweek is a regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. It begins at 12:00 a.m. on Saturday and ends at 11:59 p.m. on Friday.

### **§133-55-8. Work Schedules.**

8.1. Each institution shall establish a policy, with the advice and assistance of staff council and other groups representing classified employees, which shall: address any institution-specific procedures concerning the use of flexible work schedules, job sharing, and four-day work weeks; discourage temporary, non-emergency changes in an employee's work schedule; and provide a mechanism for changes in, and notification of, changes in work schedules. This policy shall also provide that, where possible, the institution shall provide the employee with reasonable notice of such changes.

### **§133-55-9. Pay Calculations.**

9.1. Base salary is calculated on a thirty-seven and one-half (37 1/2) hour workweek.

9.2. When base salary increases are calculated and rounding is involved, the policy is to round up to the nearest even dollar amount.

9.3. Overtime pay for non-exempt employees is calculated at the rate of one and one-half (1 1/2) times the regular hourly rate, which is the total base salary, plus any incremental pay, divided by 1,950 hours.

Overtime does not commence until forty (40) hours have actually been worked within one (1) workweek. Regular hourly pay, also known as "straight time," is paid for work time between thirty-seven and one-half (37 1/2) hours and forty (40) hours in a work week.

9.4. Only actual hours worked are included in calculating overtime. Pay which is received for holidays, annual leave, sick leave, or work release time, as authorized by Series 38, is not counted as working hours for purposes of overtime.

9.5. Annual leave, sick leave and longevity do not accumulate in any part of a month for which an employee is off the payroll on leave without pay or during a terminal leave period. A terminal leave period is that time between the employee's last day of work and his/her last day on the payroll. Longevity continues to accrue for employees absent from work and off the payroll when the absence is due to a work related illness or injury covered by workers compensation, or is due to military service in accordance with applicable federal law.

#### **§133-55-10. Holiday Premium Time Off.**

10.1. When a full-time or part-time classified non-exempt employee is required to work on any designated board or institution holiday, that employee at his/her option shall receive regular pay for that holiday plus substitute time off or additional pay at the rate of one and one-half (1 1/2) times the number of hours actually worked. The time off must be used within a six-month period following the holiday.

10.2. When an exempt employee is required to work on any designated board or institution holiday, that employee shall be given substitute time off on an hour-for-hour worked basis.

#### **§133-55-11. Compensatory and Overtime Provisions.**

11.1. Compensatory time off shall be allowed only to the extent authorized by federal and state law.

11.2. Each institution may offer non-exempt employees compensatory time off in lieu of overtime pay. All hours worked beyond thirty-seven and one-half (37½) hours and up to and including 40 hours are calculated at the employee's regular hourly rate. Pay for time worked beyond 40 hours in a work week are to be calculated at a rate of one and one-half (1½) times the regular hourly rate.

11.3. A written agreement between the employee and the institution shall exist when the employee chooses compensatory time off in lieu of overtime pay. The written agreement may be modified at the request of either the employee or employer at any time but under no circumstances shall a change in the agreement deny the employee compensatory time heretofore acquired.

11.4. Each institution shall develop an agreement form for compensatory time accumulation in lieu of overtime payment and shall specify the required approval process which must be completed before a non-exempt employee may work beyond thirty-seven and one-half (37½) hours.

11.5. Employees may accumulate up to two hundred forty (240) hours of compensatory time and shall be paid for all hours worked above the maximum accrual.

11.6. Employees in public safety, seasonal work, and/or emergency response categories may accumulate up to four hundred eighty (480) hours and shall be paid for all hours worked above the maximum accrual.

11.7. Compensatory time must be used within one year of accrual. Approval of an employee's request to use accrued compensatory time shall be contingent upon whether it will unduly disrupt the operation of



the institutional unit.

11.8. Should an individual's employment be terminated, any unused compensatory time shall be reimbursed as follows:

11.8.a. The average regular rate received by such employee during the first three years of the employee's employment; or,

11.8.b. The final regular rate received by such employee, whichever is higher.

11.9. An employee may not work overtime unless approved in advance per institutional policy.

**§133-55-12. Posting of Vacant or New Positions.**

12.1. Each institution shall develop a policy for posting of vacant or new positions.

**133-55-13. Probationary Period.**

13.1. Full-time regular classified employees shall serve a six-month probationary period beginning at the original date of employment.

13.2. At the end the six-month probationary period, the employee shall receive a written evaluation of her/his performance and shall be informed as to whether her/his employment will continue beyond the probationary period. As with all positions, continued employment is based on adequate funding, satisfactory performance and adherence to institution rules and regulations.

**§133-55-14. Access to Personnel File.**

14.1. An employee may have access to his/her personnel file when the employing institution is normally open for business. An employee may examine his/her own file and the contents therein with the following exception:

14.1.a. Materials which were gathered with the employee's prior agreement to forfeit his/her right of access, such as some references.

14.2. A representative of the custodian of records shall be present with the employee during the review. The date, time and location of each review shall be recorded in the personnel file.

14.3. A copy of any material in the personnel file, except as noted above, shall be provided to an employee upon request. A small copy fee may be charged. Positive identification of the employee must be established prior to providing access to the personnel file. Documents may not be removed from a personnel file by the employee. An employee may petition at any time for either the removal or addition of documents to his/her own personnel file. The employer may require that employees schedule an appointment to see the personnel file.

**§133-55-15. Changes in Name, Address, Number of Dependents and Related Matters.**

15.1. It is the exclusive responsibility of each employee to notify all appropriate persons, agencies and parties when record changes occur, including emergency information.

**§133-55-16. Employee Performance Evaluations and Merit Increases.**

16.1. Organizations shall conduct regular performance evaluations of nonclassified, classified and faculty employees. Each employee shall receive an evaluation of his or her job related performance on an annual basis. The organization shall maintain evidence of employee participation in the evaluation process.

16.2. Each organization shall develop a consistent, objective performance evaluation system and evaluation instrument(s).

16.3. Organizations shall train supervisors in the best practices of conducting employee performance evaluations.

16.4. Supervisors who fail to conduct evaluations of those employees who report to them, according to their organization's policies, may be subject to disciplinary action.

16.5. Higher education organizations may grant merit increases or implement pay for performance programs which are in accordance with state law and the West Virginia Higher Education Compensation Management Program Salary Administration Guidelines.

16.6. Institutions choosing to reward and compensate employees on the basis of merit shall have in place an objective performance management/evaluation system and evaluation instrument that is consistently administered by trained supervisors.

#### **§133-55-17. Continuing Education and Professional Development.**

17.1. The Vice Chancellor for Human Resources shall, as requested by organizations, assist with:

17.1.a. Analyzing and determining training needs of organization employees and formulating and developing plans, procedures and programs to meet specific training needs and problems.

17.1.b. Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers.

17.1.c. Planning, conducting, and coordinating management inventories, appraisals, placement, counseling and training.

17.1.d. Coordinating participation by all employees in training programs developed internally or provided by outside contractors.

17.1.e. Administering and analyzing an annual training and development needs survey. The survey may coincide with the completion of the annual performance review process.

17.2. The Commission shall assist organization human resources professionals in applying fair, accountable, credible, transparent, and systematic principles to all human resources functions and shall provide model training programs to organizations upon request for assistance.

17.3. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for employees pursuing additional academic study or training to better equip themselves for their duties.

17.4. Each higher education organization shall establish and operate an employee continuing education and development program under a rule promulgated by the governing board. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for any employees pursuing additional academic study or training to equip themselves better for

their duties.

17.5. The organizational rules shall encourage continuing education and staff development and shall require that employees be selected on a nonpartisan basis using fair and meaningful criteria which afford all employees opportunities to enhance their skills and productivity in the workforce of the organization.

17.6. The organizational rules may include reasonable provisions for the continuation or return of any employee receiving the benefits of the education or training, or for reimbursement by the state for expenditures incurred on behalf of the employee.

17.7. Subject to legislative appropriation therefor, the Commission shall promote and facilitate additional, regular, training and professional development for employees engaged in human resources-related activities at all organizations or any appointees to committees based on this rule. The training and professional development:

17.7.a. Shall be developed with emphasis on distance learning, in consideration to limiting travel demands on employees; and

17.7.b. Shall be in addition to and may not supplant the training and professional development regularly provided to any class of employees by each organization

#### **§133-55-18. Classification and Compensation System Established.**

18.1. The Commission, in consultation with the Council, does hereby establish and implement the West Virginia Higher Education Compensation Management Program. The program is designed to provide institutional flexibility to manage classification and compensation for all staff jobs in West Virginia higher education. However, the program is the legislatively required system of classification and compensation for classified employees. The program represents current best practices in classification and compensation management for West Virginia higher education employees regardless of the category to which assigned. Market based classification and compensation management is recognized as the appropriate methodology for classifying higher education jobs.

18.2. The Compensation Management Program and supporting component documents to guide in the implementation and administration of the Program were approved by the Commission and Council for implementation effective September 1, 2017. The program documents shall be considered by all institutions under the jurisdiction of the Commission and Council as a model salary administration policy and guidelines. The approved compensation management program includes:

18.2.a. The “West Virginia Higher Education Compensation Philosophy” which outlines the goals, objectives, and strategies of the compensation management system;

18.2.b. The “West Virginia Higher Education Job Classification Guidelines” which assist human resources officers with determining the appropriate classification for jobs;

18.2.c. The “West Virginia Higher Education Employee Salary Schedule” consists of pay grades with pay range spreads and indicates the minimum, midpoint and maximum salary levels for each pay grade; and

18.2.d. The “West Virginia Higher Education Salary Administration Guidelines” which assist human resources officers and institutional administrators in making appropriate pay decisions in a variety of employment situations.

18.3. The West Virginia Higher Education Compensation Management Program is designed to attract, retain, and motivate a highly talented and committed workforce to support the unique missions and goals of public higher education institutions. Competitive pay is a key element in attracting, retaining, motivating and rewarding the type of employees needed to fulfill the missions of West Virginia's colleges and universities. The goal of Commission, Council and affiliated colleges and universities is to pay competitive salaries by using systems clearly communicated to employees and readily administered by managers.

18.4. In order to fulfill institutional visions, missions and goals, West Virginia higher education institutions must attract and retain highly talented staff. To meet institutional staffing needs and priorities, the compensation system established in support of this goal includes the following objectives:

18.4.a. To provide the flexibility to manage base pay through a simple clear program that is consistent with the Commission, Council, and institutions' individual strategic and organizational objectives and in accordance with organizational missions, visions, values and financial resources.

18.4.b. To establish and maintain a competitive pay structure based on comparisons to appropriate external labor markets while also considering relative internal worth;

18.4.c. Clearly articulate, through a relevant performance management program adopted by each institution, the relationship between institutional strategy and employee performance, recognition, and rewards;

18.4.d. To ensure that the compensation program and pay are administered strategically, consistently, effectively, efficiently, fairly and equitably both within the institution and statewide in compliance with the "FACT" of Higher Education Human Resources established by the West Virginia Legislature;

18.4.e. To provide a framework for career progression and recognition of high performance;

18.4.f. To reward employees on the basis of work performance;

18.4.g. To establish a compensation policy that is fair, accountable, consistent, transparent and designed to ensure sound stewardship of available compensation funding;

18.4.h. To ensure accountability for compliance with relevant federal and state statutes; and

18.4.i. To establish the principles and processes for regular review of market position and effectiveness of policies.

18.5. Colleges and universities have flexibility to manage compensation within the parameters of the compensation program and salary schedule.

18.6. Colleges and universities may initially manage compensation using across the board, market position goals, or any other method that serves to ensure fair, competitive compensation for employees. Over time, all institutions are encouraged to transition compensation management to a rewards model that compensates employees in line with their skill, effort and outcome contributions.

18.7. The Commission shall ensure that regular market salary analyses are performed to determine how organization compensation for all classes of employees compares to compensation in relevant external markets.

18.8. The Commission, in consultation with the Job Classification Committee (JCC), shall have in place a master classification specification for every classified job title.

18.9. The Commission, in consultation with the JCC, shall develop a Position Description Form/Job Description Form (PDF/JDF) to be used by all organizations to gather data necessary for classification of positions.

18.10. Each organization must ensure that a job description shall exist for every classified job. The job description should be reviewed at least every three years for accuracy by the employee and supervisor. Submission of an updated job description does not constitute a request for a classification review. A formal request must be made pursuant to section twenty of this rule.

18.11. Neither the employee nor the supervisor shall place duties in the employee's PDF that the employee is not performing, but may be expected to perform in the future.

18.12. Salary adjustments shall be made in accordance with the Salary Administration Guidelines approved by the Commission.

18.13. During the course of its reviews, should the JCC discover the systematic misapplication of the program by an organization, it shall notify the Chancellors, who will take the appropriate action warranted.

18.14. Absent fraud on the behalf of the employee, any overpayment to the employee because of an erroneous classification decision by an organization shall not be collected from the employee. However, any erroneous overpayment to such an employee, once corrected, shall not be deemed as evidence in claims by other employees that the classification and compensation program is not equitable or uniform.

18.15. Recommendations from the Compensation Planning and Review Committee (CPRC) will be considered in agenda items presented to the Commission and the Council and in the legislative reporting process.

18.16. Pursuant to State law, the Commission may not delegate to the JCC or the CPRC the following:

18.16.a. Approval of a classification and compensation rule;

18.16.b. Approval of the job classification plan;

18.16.c. Approval of the market salary schedule; and

18.16.d. Approval of the salary schedule minimums.

#### **§133-55-19. Job Classification Committee.**

19.1. The Commission hereby establishes a Job Classification Committee (JCC). The Vice Chancellor for Human Resources shall serve as the Chair of the Job Classification Committee.

19.2. The JCC shall be comprised of four classified employees and six Human Resources professionals, ensuring representation from the Council institutions and the Commission institutions.

19.3. The Chancellor of the West Virginia Higher Education Policy Commission, or designee shall solicit nominations for JCC members from the Advisory Council of Classified Employees (ACCE) and the Chief Human Resources Officers (CHROs).

19.4. JCC members shall be appointed by the Chancellor of the West Virginia Higher Education Policy Commission, with concurrence of the Chancellor of the West Virginia Council for Community and Technical College Education, subject to approval by the Commission and Council.

19.5. An organization may have no more than two members serving on the Committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

19.6. Committee members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

19.7. The Commission shall use an appropriate methodology to classify jobs. The Commission, in consultation with the Council, may adjust the job evaluation plan, including the factors used to classify jobs and their relative values, if necessary.

19.8. Powers and duties of the Job Classification Committee include, but are not limited to, the following:

19.8.a. Providing a system of audit for all master classification specifications to make sure the core responsibilities of positions assigned the titles are accurately reflected;

19.8.b. Recommending a procedure for performing job family reviews;

19.8.c. Modifying and deleting job titles and creating new job titles;

19.8.d. Reviewing and revising job titles to make them consistent among organizations, including adopting consistent title abbreviations;

19.8.e. Determining appropriate career ladders or job levels in each job family and establishing criteria for career progression;

19.8.f. Conducting job family reviews to ensure master classification specifications appropriately reflects duties, responsibilities, minimum requirements and contains appropriate distinguishing characteristics that clearly delineate differences in job titles and support assigned pay grades.

19.8.g. Classifying jobs and placing jobs in pay grades consistent with the classification and compensation program;

19.8.h. Determining when new master classification specifications with assigned pay grades are needed, and;

19.8.j. Hearing job classification appeals prior to commencement of the formal grievance process.

19.8.k. The JCC shall meet monthly if there is business to conduct and also may meet more frequently at the call of the chair, given adequate lead time. A majority of the voting members serving on the Committee at a given time constitutes a quorum for the purpose of conducting business.

#### **§133-55-20. Classification Review Request of Existing Position.**

20.1. An incumbent employee or the employee's supervisor may request a classification review when significant changes occur in the principal duties and responsibilities of a position.

20.2. Classification review requests are not to be submitted based on a desire for a salary increase, to reward for job performance, seniority, equity, future tasks, additional duties of the same nature and level of the job held or because an employee's pay is at or near the pay range maximum.

20.3. To initiate the classification review request, the employee and supervisor must complete the position description form (PDF) and a formal request for classification review form. Both must be submitted to the institutional Human Resources Office. The request for review form must include the date and detailed reasons for such request.

20.4. The responsibility for assigning tasks and duties to a position belongs to the supervisor.

20.5. Requests for position reviews also may be initiated by an employee with Human Resources after discussion with the immediate supervisor.

20.6. Classification reviews also may be initiated by the institution's Chief Human Resources Officer or his/her designee after discussion with the immediate supervisor.

20.7. Within forty-five (45) working days from the date of the formal request for review of a job, the institution's Chief Human Resources Officer or his/her designee shall report to the requestor in writing the result of the classification review.

20.8. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade.

### **§133-55-21. Classification Appeals Process.**

21.1. In the event that a classified employee disagrees with a classification decision made at the organizational level, he/she may appeal that decision in writing to the Vice Chancellor for Human Resources for review by the JCC. Filing a classification appeal, however, shall not abridge the rights of a classified employee to file a formal grievance, using the statutory grievance process as set forth in West Virginia Code §6C-2-1 *et seq.*; provided, however, upon the simultaneous filing of a statutory grievance and a classification appeal to the Vice Chancellor for Human Resources by a classified employee, a request may be made, in writing, by the classified employee to hold the grievance in abeyance until the review by the JCC is completed and a classification decision is rendered by the JCC.

21.2. The Classification Appeal Process and timelines are outlined in the West Virginia Higher Education Compensation Management Program "Job Classification Guidelines" approved by the Commission.

21.3. Time limits.

21.3.a. The classified employee shall submit a completed "Classification Appeals Form" to the organization's Human Resources office within ten (10) working days from the date of receipt of the notice of the organization's classification decision.

21.3.b. The organization's human resources staff shall render a decision on the appeal within five (5) working days whether the original decision shall be upheld.

21.3.c. The classified employee shall have five (5) working days from the date of receipt of the notice upholding the original decision of the organization to appeal the action to the Vice Chancellor for Human Resources for submission to the JCC.

21.4. Upon receipt of the classified employee's appeal of the organization's decision, the Vice Chancellor for Human Resources shall forward the appeal to the JCC.

21.4.a. The JCC shall review the Classification Appeals Form, the original PDF, and all supporting documentation, submitted by a classified employee to the Human Resources Office.

21.4.b. The JCC may review comparable positions within the organizations.

21.4.c. The JCC shall notify the classified employee, and the organization's Human Resources Office, of its decision in writing, within twenty (20) working days from the date of receipt of the appeal to the Vice Chancellor for Human Resources. The notification shall specify the effective date should there be any change in status.

22.1. An appeal shall not be considered if based on any of the following reasons:

22.1.a. As a method to obtain a salary increase. The new Compensation Management Program should substantially limit the number of classification review requests. Compensation is not tied to a step on the salary schedule or to years of WV government service of the incumbent employee. Considerations for an increase in compensation are not to be made using the classification review process.

22.1.b. Seniority. An appeal shall not be considered if it is based on the employee's length of service with the organization or with the state of West Virginia.

22.1.c. Qualifications of the individual incumbent. An appeal shall not be considered if it is based upon the individual classified employee's qualifications. A classification determination is based upon the duties and responsibilities of the job as well as the minimum requirements necessary to perform the duties and responsibilities of the position.

22.1.d. Anticipated future job responsibilities. An appeal shall not be considered if it is based upon responsibilities that may be included in the job assignment in the future.

22.1.e. Job Performance. An appeal shall not be considered if it is based upon the performance of the incumbent or certain personality traits (e.g., loyalty, dedication, commitment to organization, hardworking, etc.). A classification determination is based upon the level and complexity of the duties and responsibility of the job performed, not the characteristics of the individual holding the position.

22.1.f. Salary within a salary range. An appeal shall not be considered if it is based upon the fact that an employee's salary is close to the maximum of a salary range or the relative position of the salary within the assigned salary range.

22.1.g. Increase in the volume of work. An appeal shall not be considered if it is based on the volume of work rather than the level of responsibilities and complexity of the work.

### **§133-55-23. Compensation Planning and Review Committee.**

23.1. The Commission shall hereby establish and maintain a Compensation Planning and Review Committee (CPRC). The Vice Chancellor for Human Resources shall serve as the Chair of the CPRC.



23.2. The composition of the CPRC shall consist of the Vice Chancellor for Human Resources, the Vice Chancellor for Finance, two members representing the statewide Advisory Council of Classified Employees, one from institutions under the jurisdiction of the Council and one from institutions under the jurisdiction of the Commission; two nonclassified representatives, one from institutions under the jurisdiction of the Council and one from institutions under the jurisdiction of the Commission; two human resources administrators from institutions under the jurisdiction of the Council, and two human resources administrators from institutions under the jurisdiction of the Commission; and a president from each of the two systems.

23.3. The method for nominating CPRC members shall be representative of all the higher education organizations under the jurisdiction of the Commission or Council and affected constituent groups, including specifically providing for membership selections to be made from nominations from the Advisory Council of Classified Employees, the Chief Human Resources Officers, and the respective bodies representing Commission and Council presidents. The Chancellors, jointly, shall appoint members from nominations made by these affected constituent groups and require approval of the Commission and Council before beginning service.

23.4. An organization may have no more than two members serving on the CPRC at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

23.5. The CPRC shall manage all aspects of compensation planning and review that the Commission delegates to it, within the provisions of state law.

23.6. CPRC members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

23.7. The CPRC shall meet at least quarterly and at other times at the call of the Chair. A majority of the voting members serving on the CPRC at a given time constitutes a quorum for the purpose of conducting business.

23.8. The CPRC has powers and duties which include, but are not limited to, the following:

23.8.a. Making recommendations for revisions in the system compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data;

23.8.b. Overseeing the annual internal market review;

23.8.c. Meeting at least annually with the JCC to discuss benchmark jobs to be included in salary surveys, results of job family reviews, and assessment of current job titles within the classification system for market matches and other issues as the Vice Chancellor for Human Resources, in consultation with the Chancellors, determines to be appropriate;

23.8.d. Performing other duties as assigned by the Commission or as necessary or expedient to maintain an effective classification and compensation system.

#### **§133-55-24. Salary Structure.**

24.1. The Commission and Council shall develop and maintain a market based salary structure and ensure that all organizations under its jurisdiction adhere to state and federal laws and duly promulgated and adopted organization rules.

24.2. The Commission and Council shall jointly use workforce compensation data provided by Workforce West Virginia and other compensation data as is readily available from national recognized sources to establish the appropriate external labor market. The Commission and Council, in consultation with the CPRC, and taking into consideration updated market information, may take any combination of the following actions in regard to the classified market salary structure:

24.2.a. Adjust the salary schedule midpoints and/or number of pay grades;

24.2.b. Adjust the midpoint differentials between pay grades to better reflect market conditions; or

24.2.c. Adjust the range spread for any pay grade.

24.3. The Commission, in consultation with the Council, may perform an annual review of market salary data to determine how salaries have changed in the external labor market. Based on supporting data derived from that review, the Commission and Council, with input from the CPRC, have the option to adjust the market salary structure to maintain competitiveness and currency with the market.

24.4. The approved market salary structure shall include a midpoint representing the median market value of jobs assigned to each pay grade. The schedule will contain a minimum and maximum salary range for each pay grade.

24.4.a. After July 1, 2019, no organization may compensate a classified employee at a salary rate of less than the minimum of the grade. Upon future annual schedule adjustments, the requirement to pay classified employees no less than minimum of the grade, is subject to available funds.

24.5. The salary of a classified employee working fewer than thirty-seven and one-half hours per week shall be prorated. The organization's salary rule may provide for differential pay for certain classified employees who work different shifts, weekends or holidays.

24.6. Merit increases may be granted if they are in accordance with statute and with duly promulgated rules of the Commission or institution.

### **§133-55-25. Organizational Rules.**

25.1. Each institution shall amend any of its policies/rules to comply with the Commission's rule or rules no later than six months after the effective date of any change in statute or Commission rule or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.

25.2. An institution may not adopt a rule, as mandated by this subsection, until it has consulted with the appropriate employee classes affected by the institution's rule or rule's provisions. At a minimum, consultations with the institutional Classified Employees Council (staff council) and/or the institutional Faculty Senate (faculty senate), as appropriate, shall take place.

25.3. If an institution fails to adopt a rule or rules as mandated by this subsection, the Commission may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a Commission rule until the organization's rule requirements have been met.

25.4. Unless a governing board exercises the flexibility to create its own classification and compensation program pursuant to Section 26 of this rule, the Chancellor or his or her designee has the

authority and the duty to review each institution's comprehensive classification and compensation rule or rules and to recommend changes to the rule or rules to bring them into compliance with Commission rule or rules or legislative and Commission intent. The Chancellor may reject or disapprove any rule or rules, in whole or in part, if he or she determines that it is not in compliance with any rule/rules or if it is inconsistent with Legislative and Commission intent or does not sufficiently address and include measures that foster meaningful accountability of the institution to this rule, its own rules and state law.

**§133-55-26. Organizational Flexibility to Adopt Personnel Rules.**

26.1. Organizations that provide notice to the Commission may, after consultation with staff council, file a rule or rules to implement provisions of West Virginia Code §18B-7 and §18B-8, and upon the adoption, any rules promulgated by the Commission under the same sections of state law are inapplicable to the organization.

26.2. Any organization that provides notice to the Commission may establish a classification and compensation rule, after consultation with and providing thirty (30) days written notice to the staff council, that incorporates best human resources practices and addresses the areas of organizational accountability, employee classification and compensation, performance evaluation, reductions in force, and development of organizational policies, and upon the adoption the provisions of West Virginia Code §18B-9A and any rule promulgated by the Commission thereto, is inapplicable to the extent it conflicts with the rule promulgated by the organization. Provided, that any rule adopted by an organization shall use the definitions of classified and nonclassified employees established in state law. The rule shall provide for an external review of human resources practices at the organization at least once every five years, relating to compliance with the West Virginia higher education personnel law, including provisions that staff council have an opportunity to speak with the external auditor before the start of the audit and after its completion.

**§133-55-27. Organizational Accountability.**

27.1. A major deficiency means an organization has failed to comply with applicable personnel rules of the Commission. The following guidelines exist for correcting deficiencies should any be found:

27.1.a. When a major deficiency is identified, the Commission shall notify the governing board of the institution in writing within forty working days, giving particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.

27.1.b. The governing board shall correct the major deficiency within four months and shall notify the Commission when the deficiency has been corrected; however, extensions of this time frame may be requested and granted by the Commission.

27.2. If the governing board fails to correct the major deficiency or fails to notify the Commission that the deficiency has been corrected within a period of four months from the time the governing board receives notification, the Commission may apply sanctions as specified:

27.2.a. Sanctions may include, but are not limited to, suspending new hiring by the organization and prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.

27.3. To the extent that major deficiencies are identified relative to the Commission central office the sanctions described above shall be applicable.

**Appendix A**

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

**SERIES 55  
HUMAN RESOURCES ADMINISTRATION**

**Definitions**

**General Definitions.**

Definitions in this section are applicable to higher education generally and terms and conditions of employment.

Benefits. Programs that an employer uses to supplement the cash compensation of employees, including but not limited to, health and welfare plans, retirement plans, pay for time not worked (i.e. sick leave, annual leave, holiday pay, etc.) and other employee perquisites.

Chancellor. Chancellor refers to the chief executive officer of the West Virginia Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, as appropriate.

Compensatory Time and Compensatory Time Off. Hours during which the employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employee is compensated at the employee's regular rate of pay.

Exempt Employees. Employees not covered by the Fair Labor Standards Act (FLSA) for overtime purposes.

Full Time Equivalency (FTE). The percentage of time for which a position is established, with a full-time position working 1,950 hours per year being 1.00 FTE.

Health and Welfare Benefit Plan. An arrangement which provides any of the following benefits: medical, dental, visual, psychiatric or long-term health care, life insurance, accidental death or dismemberment benefits, disability benefits, or comparable benefits.

Incumbent. An incumbent is an individual person in a position employed at an institution.

Longevity. The total number of years employed at state institutions of higher education and other agencies of state government in West Virginia.

Major Deficiency. When an organization has failed to comply with applicable personnel rules of the Commission.

Meaningful Accountability. Measures that ensure adherence to rules and policies and provides for consequences for non-compliance.

Non-Exempt Employee. An employee who is covered by the Fair Labor Standards Act (FLSA) and is entitled to overtime as outlined in federal and state law.

**Organization.** Organization means the Commission, the Council, an agency or entity under the respective jurisdiction of the Commission or the Council or a state institution of higher education. Organizations include the following entities individually or collectively -- Bluefield State College; Concord University; Fairmont State University; Glenville State College; Marshall University; Shepherd University; West Liberty University; West Virginia School of Osteopathic Medicine; West Virginia State University; West Virginia University, including Potomac State College and West Virginia University Institute of Technology; Blue Ridge Community and Technical College; BridgeValley Community and Technical College; Eastern West Virginia Community and Technical College; Mountwest Community and Technical College; New River Community and Technical College; Pierpont Community and Technical College; Southern West Virginia Community and Technical College; West Virginia Northern Community College; West Virginia University at Parkersburg; the Office of the Higher Education Policy Commission; the Office of the Council for Community and Technical College Education; and the West Virginia Network for Educational Telecomputing.

**President.** A chief executive officer of an institution of higher education in West Virginia who reports to the institution's governing board. This term shall be used in this rule to refer to the Chancellor for the office of the Higher Education Policy Commission and the Director of the West Virginia Network for Educational Telecomputing.

**Rehire.** Rehire defines an employee who leaves the service of an institution and later applies for and accepts a position offered by the same institution.

**Seniority.** The total number of months or years employed with the current West Virginia higher education organization employer.

**Job Documentation Classification and Compensation.**

Definitions in this section are applicable to job documentation, classification and compensation management.

**Base salary.** The amount or a rate of compensation for a specified position of employment or activity excluding annual experience increment and any other payments or allowances for work or activity unrelated to that specified position of employment.

**Base salary adjustment.** The amount that a base salary increases within the pay grade to reward performance, to rectify inequities, or to accommodate competitive market conditions.

**Benchmark Job.** A job that is commonly found and defined, used to make pay comparisons to comparable jobs outside the organization.

**Career Ladder.** A structured sequence of related, upwardly progressing positions.

**Classification System.** An organized structure in which jobs, job descriptions, job titles, and job analyses are utilized to determine a hierarchy of jobs, career ladders and pay grade assignments.

**Compa-Ratio.** A measure to assess competitiveness of current salary level to the market (midpoint of the salary structure). Compa-ratio is the short form for Comparative ratio. It measures the ratio of an employee's actual salary (the numerator) to the midpoint of the applicable (the denominator) salary range. To calculate an individual's compa-ratio, divide the base salary by the midpoint of the assigned salary range (pay grade range). See also "salary range penetration".

**Compensation.** Earnings provided by an employer to an employee for services rendered.

Compensation Philosophy. The guiding principles that ensure that a compensation program supports an organization's culture.

Compensation Strategy. The principles that guide the design, implementation and administration of a compensation program at an organization for the purpose of supporting the organization's mission, vision, goals and objectives.

Compression. The situation encountered when a new employee enters into the organization at or above the pay of someone who is currently in the same role in the organization. It can also exist when you have two jobs in the same job family with someone in the "lower" job earning more than the person in the "higher" job. There are some families in which this may make sense such as software development where a senior developer may appropriately earn more in base than a manager of the function.

Increment. Annual payment to employees based on years of West Virginia state government work experience and earned pursuant to West Virginia Code §5-5-2.

Internal Equity Analysis. A comparative analysis of compensation levels within an organization to determine if a level of compensation is equitable when compared to compensation of other employees who hold similarly situation positions in the same job classification or pay grade who have the same or similar levels of knowledge, skill, experience and performance.

Interim Responsibilities. A significant change in duties and responsibilities of an employee on a temporary basis justifying an interim promotion or upgrade for salary purposes. Such a temporary reassignment shall normally be for no less than four (4) consecutive weeks, no more than twelve (12) consecutive months, and shall only occur when the responsibilities being undertaken by the employee are those of another position that is vacant.

JDXperts. Web based job information and description management software system provided as a shared service to institutions of the Commission and Council. JDXperts is the official depository of institutional job information used for job analysis, institution job description development, master classification specification development and identification of benchmark jobs. Benchmark jobs are used to build and maintain the market based salary structure administered by institutions as part of the higher education employee classification and compensation management program.

Job. The total collection of tasks, duties, and responsibilities assigned to one or more individuals whose work is of the same nature and level.

Job Analysis. A systematic process in which information is collected via a position information form relative to the nature of a specific job, providing documentation and knowledge needed for conducting a job evaluation.

Job Class / Pay Grade. The level to which a job is assigned within a salary structure.

Job Classification/Job Evaluation. A formal process used to evaluate jobs, establish proper pay grades, and slot jobs in pay grades.

Job Classification Committee. A Committee of employee and human resources representatives established by West Virginia Code tasked with evaluating classification appeals and other changes to classified jobs.

Job Description. (Used interchangeably with the phrases institution job description, position job description, incumbent job description): A summary of the essential functions of a job at a particular

institution, including the general nature and level of the work performed, a characteristic listing of duties and responsibilities, and the knowledge, skills and abilities necessary to perform the work. Best practices in human resources management support maintaining a current job description for all jobs in the organization, regardless of the employee category assigned to the position incumbent.

Job Family. A series of job titles in an occupational area or group.

Job Specification. See Master Classification Specification

Job Title. The label that uniquely identifies and generally describes a job. The same descriptive job title shall be given to a group of jobs, regardless of location in the organization, which are substantially the same in duties and responsibilities, and which require substantially the same knowledge, skills and abilities performed under similar working conditions.

Labor Market. The labor market for compensation is the geographic area, industry, organization size, or organization type from which an organization attracts employees. Market Value refers to how much a particular job would be worth for a specific talent market (industry, size, location, organization type) at a specific or target percentile.

Master Classification Specification/Job Specification. General descriptions of the collective type and kind of work performed by the majority of employees assigned the same job classification. Each master specification will contain a job title, nature of work performed, distinguishing characteristics of the job, and a general description of typical duties and responsibilities performed by positions assigned the title, regardless of the location of the position.

Mid-Point. Midpoint is the middle of a pay range; the midpoint typically aligns to the market value for the job. See “Range Midpoint”

Merit Increases. A discretionary salary increase given to an employee to reward demonstrated achievements in the performance of the duties and responsibilities of a position, as evaluated by criteria established by the organization.

Pay Grade. See Job Class/Pay Grade.

Pay Range Quartile. The four divisions of a pay range. The point between the 2<sup>nd</sup> and third quartile is the midpoint of the pay range.

Pay Range or Pay Range Spread. Pay range is an expression of the pay for a position assigned to a pay grade in a salary structure that provides the minimum, midpoint and maximum levels of compensation. The range from minimum to maximum, expressed as a percentage, is the pay range spread. The range spread percentage is calculated by subtracting the minimum from the maximum and dividing by the minimum the multiplying by 100.

Pay Structure. See Salary Schedule

Position. A set of duties and responsibilities requiring employment of a single employee at a particular organization.

Position Description Form/Job Description Form (PDF/JDF). A tool used to collect a broad range of job information used in the creation and classification of a new or changed position. A position description form is not required for every employee or job. Formerly referred to as a position information questionnaire.

Promotion. Movement from a position requiring a certain level of skill, effort, and authority into a vacant or newly created classified position assigned to a different job title and a higher pay grade that requires a greater degree of skill, effort, and authority.

Range Midpoint. Midpoint is the middle of a pay range. The midpoint typically aligns to the market value for the job.

Range Penetration/Position in Range. An important compensation metric to consider in conjunction with a compa-ratio. Rather than just being a comparison to one piece of data (the midpoint), range penetration looks at a salary in relation to the whole pay range. Range Penetration is how far an employee has progressed through the pay range. Range penetration =  $(\text{Salary} - \text{Range Minimum}) \div (\text{Range Maximum} - \text{Range Minimum})$  See the Salary Administration Guidelines for more information about range penetration.

Rehire. Rehire defines an employee who leaves the service of an institution and later applies for and accepts a position offer at the same institution.

Salary Benchmarking. The process of market pricing a benchmark job.

Salary Structure/Pay Structure/Salary Schedule. A graphical structure consisting of a series of pay grades and range of pay available for each grade.