WEST VIRGINIA CODE: §18B-1-6

§18B-1-6. Rulemaking.

(a) The commission may promulgate, adopt, amend, or repeal rules, in accordance with §29A-3A-1 *et seq*. of this code, subject to §18B-1-3 of this code. This grant of rule-making authority does not limit, overrule, restrict, supplant, or supersede the rule-making authority provided to the exempted schools.

(b) The council may promulgate, adopt, amend, or repeal rules in accordance with §29A-3A-1 *et seq*. of this code, subject to §18B-1-3 of this code. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend, or repeal any rule under this code:

(1) "Rule" means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application which has institution-wide effect or which affects the rights, privileges, or interests of employees, students, or citizens. Any regulation, guideline, directive, standard, statement of policy, or interpretation of general application that meets this definition is a rule for the purposes of this section.

(2) Regulations, guidelines, or policies established for individual units, divisions, departments, or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department, or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The commission shall promulgate a rule to guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate, except the exempted schools, who shall each promulgate their own rules. The council shall promulgate a rule to guide the development and approval of rules made by the governing boards. The commission and council shall provide technical assistance in rulemaking as requested. The rules promulgated by the exempted schools, the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a 30 day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines, and other policy statements are posted and can be accessed by the public;

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(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines, and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within 15 business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record them as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in §29A-3A-1 *et seq*. of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend, or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter 18C of this code no later than July 1, 2011, unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within 15 business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended, or repealed by the governing board. For all rules adopted, amended, or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when

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each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this section or approved by the Legislature during its 2017 Regular Session shall remain in effect and applicable to an institution of higher education under the jurisdiction of the commission or council until an institution exercises its authority to adopt a rule pursuant to this chapter.

(j) On or after July 1, 2024, a rule adopted pursuant to the provisions of this section may not restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

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