



MEETING AGENDA

August 24, 2018

Michael J. Farrell, Chair

Jenny Allen

James Dailey

Diane Lewis

Dale Lowther

Andrew Payne

Donna Schulte

Steve Paine, Ed.D., Ex-Officio

Robert Brown, Ex-Officio

Carolyn Long, Interim Chancellor

Directions to the West Virginia **Regional Technology Park**

2000 Union Carbide Drive, South Charleston, West Virginia



Arriving from the EAST on I-64

(after leaving Charleston)

1. At I-64 exit 55, take Ramp (RIGHT) toward Kanawha Turnpike
2. Stay on Kanawha Turnpike [CR-12]
3. After about 0.5 mile, turn LEFT into the West Virginia Regional Technology Park (3300 Kanawha Turnpike)
4. Proceed to Building 2000

Arriving from the WEST on I-64

(approaching Charleston):

1. At I-64 exit 54, turn RIGHT onto Ramp towards US-60 / MacCorkle Ave / South Charleston
2. Keep RIGHT to stay on Ramp towards US-60
3. Bear RIGHT (East) onto US-60 [MacCorkle Ave SW], then immediately turn RIGHT (South-East) onto SR-601 [Jefferson Rd]
4. After 0.5 mile, bear left at the traffic light onto Kanawha Turnpike [CR-12]
5. Continue straight (0.1 mile) through the next traffic light on Kanawha Turnpike
6. After about 0.5 mile, turn RIGHT into the West Virginia Regional Technology Park (3300 Kanawha Turnpike)
7. Proceed to Building 2000

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION MEETING

August 24, 2018 | 9:00 a.m. | West Virginia Regional Technology Park

AGENDA

- I. Call to Order**
- II. Approval of Minutes (*Pages 5 – 16*)**
- III. Chairman's Report**
- IV. Chancellor's Report**
- V. Council of Presidents' Report**
- VI. Updates from Constituent Groups**
 - A. Advisory Council of Classified Employees
 - B. Advisory Council of Faculty
 - C. Advisory Council of Students
- VII. Access**
 - A. Approval of Eligibility Requirements for the PROMISE Scholarship Program (*Page 17*)
- VIII. Success**
 - A. Report on Master's Degree Programs (*Pages 18 – 21*)
- IX. Impact**
 - A. Approval of System Master Plan (*Pages 22 – 23*)
 - B. Update on Statewide Attainment Goal Campaign (*Page 24*)
- X. Report on Campus Safety Plans (*Pages 25 – 27*)**
- XI. Report on West Liberty University Campus Facilities Plan (*Pages 28 – 29*)**
- XII. Approval of West Liberty University Bond Issuance (*Pages 30 – 56*)**
- XIII. Progress Report on Funding Model Research Study (*Pages 57 – 58*)**
- XIV. Presentation of Report from the National Center for Higher Education Management Systems (*Pages 59 – 88*)**
- XV. Approval of Fiscal Year 2019 Division of Science and Research Spending Plans (*Pages 89 – 91*)**

XVI. Approval of Fiscal Year 2019 WVNET Budget (*Pages 92 – 103*)

XVII. Approval of Revisions to Series 4, Procedural Rule, Rules and Administrative Procedures (*Pages 104 – 118*)

XVIII. Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents (*Pages 119 – 128*)

XIX. Series 59, Procedural Rule, Awarding Undergraduate College Credit for Prior Learning, Advanced Placement Credit, and College-Level Examination Program (*Pages 129 – 136*)

XX. Possible Executive Session under the Authority of West Virginia Code §6-9A-4 to Discuss Property Issues and Pending and Potential Litigation

- A. Consideration of Matters Involving or Affecting the Purchase, Sale or Lease of Property, Advance Construction Planning, the Investment of Public Funds or Other Matters Involving Commercial Competition, which if Made Public, Might Adversely Affect the Financial or Other Interest of the State or Any Political Subdivision
- B. Attorney-Client Privileged Discussions Regarding Matters Which, by Express Provision of Federal Law or State Statute or Rule of Court are Rendered Confidential, or Which are Not Considered a Public Records Within the Meaning of the Freedom of Information Act as Set Forth in West Virginia Code Article 1, Chapter 29B

XXI. Additional Board Action and Comment

XXII. Adjournment

DRAFT MINUTES

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION Work Session

June 13, 2018

I. Call to Order

Chairman Michael J. Farrell convened a work session of the Higher Education Policy Commission at 3:30 p.m., in the 9th Floor Conference Room at 1018 Kanawha Boulevard, East, Charleston, West Virginia, and by conference call. The following Commission members participated: Jenny Allen, Michael J. Farrell, Diane Lewis, and Dale Lowther. Also in attendance were Chancellor Paul L. Hill and staff, state college and university representatives, and others.

II. Review of June 22, 2018 Agenda

Commission staff provided an overview of the items on the agenda for the June 22, 2018 meeting.

III. Adjournment

There being no further business, the meeting was adjourned.

Michael J. Farrell, Chairman

Andrew A. Payne, Secretary

DRAFT MINUTES

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION SPECIAL MEETING

July 10, 2018

I. Call to Order

Chairman Michael J. Farrell convened a special meeting of the Higher Education Policy Commission at 9:00 a.m. in the 9th Floor Conference Room at 1018 Kanawha Boulevard, East, Charleston, West Virginia, and by conference call. Chairman Michael J. Farrell was present. The following Commission members participated by telephone: Jenny Allen, Robert L. Brown (Ex-Officio), James W. Dailey, Diane Lewis, Dale Lowther, Steven L. Paine (Ex-Officio), and Andrew A. Payne. Commissioner Donna L. Schulte was absent. Also in attendance were Chancellor Paul Hill, staff members, and others. Chairman Farrell welcomed the audience to the meeting.

II. Update on Report from the National Center for Higher Education Management Systems

Consultants Aims McGuinness, Dennis Jones, and Brian Prescott provided an update via telephone regarding the study of how the system of higher education in West Virginia may be sustained and strengthened in the future. The Commission contracted with the National Center for Higher Education Management Systems to conduct the study in response to a directive from Governor Jim Justice. The final report will be presented to the Commission at its August meeting.

III. Executive Session under the Authority of West Virginia Code §6-9A-4

Commissioner Dailey moved to convene in Executive Session under the authority of West Virginia Code §6-9A-4 to discuss personnel issues. Commissioner Lewis seconded the motion. Motion passed.

After deliberations, the Commissioners returned in open session. Commissioner Payne moved to rise from Executive Session. Commissioner Lewis seconded the motion. Motion passed.

Chairman Farrell stated that no decisions were made or actions taken during Executive Session.

IV. Board Action and Comment

A. Current Chancellor's Contract

Commissioner Brown moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission authorizes Chairman Farrell to enter into a contract with Chancellor Paul Hill to go into a six-month sabbatical at his current salary to work on matters for the Higher Education

Policy Commission and support the work of the Blue Ribbon Commission on Four-Year Higher Education. Chancellor Hill will report directly to the Chairman. He will be allotted a budget of \$10,000 for travel expenses.

Commissioner Allen seconded the motion. Motion passed.

B. Appointment of Interim Chancellor

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission appoints Ms. Carolyn Long, President of the West Virginia University Institute of Technology, as Interim Chancellor of the Higher Education Policy Commission, effective July 16, 2018, at a salary equal to that of retiring Chancellor Paul Hill's.

Commissioner Allen moved to table this resolution to allow the Commissioners to have a proper, more thorough, and more transparent process that will permit them to at least interview the current candidates and consider perhaps other candidates, as this is the single most important action any board can take. She further moved to have a chance to resolve concerns that this appointment might be in violation of certain aspects of West Virginia Code. There were no seconds to the motion. The motion failed.

Upon the call on the original motion, Commissioner Lewis seconded the motion. Commissioner Allen opposed the motion. Motion passed.

V. Approval of Suspension of Chancellor Search

Commissioner Payne moved approval of the following resolution:

Resolved, that the West Virginia Higher Education Policy Commission hereby suspends the search for a new Chancellor pending the action, if any, that may be appropriate following the report of the Blue Ribbon Commission on Four-Year Higher Education created by Governor Jim Justice by Executive Order dated June 26, 2018.

Commissioner Dailey seconded the motion. Motion passed.

V. Adjournment

There being no further business, Commissioner Payne moved to adjourn the meeting. Commissioner Lewis seconded the motion. Motion passed.

Michael J. Farrell, Chairman

Andrew A. Payne, Secretary

DRAFT MINUTES

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

June 22, 2018

I. Call to Order

Chairman Michael J. Farrell convened a meeting of the Higher Education Policy Commission on June 22, 2018, at 9:00 a.m. in the David K. Hendrickson Conference Center of the West Virginia Regional Technology Park, 2000 Union Carbide Drive, South Charleston, West Virginia. The following Commissioners were present: Jenny Allen, James W. Dailey, Michael J. Farrell, Diane Lewis (by phone), Dale Lowther, Andrew A. Payne, and Donna L. Schulte. Absent were Commissioners Robert L. Brown (Ex-Officio) and Steven L. Paine (Ex-Officio). Also in attendance were Chancellor Paul L. Hill, institutional presidents, higher education staff, members of the faculty and classified staff councils, and others.

II. Approval of Minutes

Commissioner Dailey moved to approve the minutes of the meetings held on March 15, March 23, April 23, and May 7, 2018. Commissioner Payne seconded the motion. Motion passed.

III. Chairman's Report

Chairman Farrell welcomed Commission members and the audience to the meeting. He expressed gratitude for everything the institutions and staff do for higher education. He reported that an advertisement for the chancellor's position was published and applications are being received. The Search Committee plans to submit a nominee to the Commission at its August meeting. Regarding the development of the new funding formula, Chairman Farrell stated that the Committee received many positive comments from the Legislature and hope to have a final product by the end of summer.

He introduced Ms. Donna L. Schulte as a new Commissioner appointed by Governor Justice. Chairman Farrell administered the Oath of Office to Ms. Schulte.

Chairman Farrell bid farewell to Commissioner Jenny Allen who expects to resign from the Commission before her term expires. He praised Ms. Allen for serving the Commission with great distinction, read a resolution honoring her service, and presented her with a memento.

Chairman Farrell announced the retirement of Dr. Michael Adelman as President of the West Virginia School of Osteopathic Medicine, and of Dan O'Hanlon as Vice Chancellor for Technology and Director of WVNET. Resolutions commending their service accompanied by mementos will be sent to each individual.

A. Nominating Committee Report and Election of Officers

Commissioner Jenny Allen, Nominating Committee Chair, reported that the committee recommends Michael J. Farrell to serve as Chairman, Andrew A. Payne as Vice Chairman, and Diane Lewis as Secretary. The recommended individuals are willing to serve if approved by the Commission.

Commissioner Lowther moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission elects the nominated officers for Fiscal Year 2019 as proposed by the Nominating Committee.

Commissioner Dailey seconded the motion. Motion passed.

IV. Chancellor's Report

Dr. Paul Hill, Chancellor, reported on upcoming events organized by Commission staff such as GEAR UP U, a 4-day summer academy, on June 27-30 at Marshall University; and the Student Success Summit on July 25-26 at the Waterfront Hotel in Morgantown. Among other activities, staff engaged in the preparation of the capital and operating budgets for the new fiscal year; the completion of the 2018 budget audit; the repeal of legislative rules; discussions with the campuses regarding the development of the new master plan for higher education; and the publication of This Week at the Commission, a weekly communication of news clips of the Commission.

V. Council of Presidents' Report

Dr. Kendra Boggess, Chair of the Council of Presidents, reported that the presidents are working on completion of their institution's annual audit for timely submission to the U.S. Department of Education. In addition, the Council discussed the development of the new master plan; the proposed funding model; the reports to Fleet Management regarding leased state vehicles, and the repeal of certain Commission rules. Dr. Boggess shared the presidents' enthusiasm over the beginning of the new academic year.

VI. Updates from Constituent Groups

A. Advisory Council of Classified Employees

Ms. Carrie Watters, representative of the statewide Advisory Council of Classified Employees, thanked the Commissioners for allowing the Council to report on its activities. Ms. Watters stated that the Council has formed several internal committees: Benefits Committee; Student Advocacy Committee, Legislative Committee, Website and Communications Committee, and Special Events Committee. Ms. Watters stated that the Council members are proud of the work they perform and strongly believe in the students they serve. They do not focus solely on the needs of their group as much of the work they conduct

helps all employees in public higher education. She announced that the Council will hold its annual retreat on July 16 at Canaan Valley Conference Center.

B. Advisory Council of Faculty

Dr. Mary Beth Beller, Vice Chair of the Advisory Council of Faculty, reported that the Council has been discussing the implications of House Bill 2542. The Council is concerned that the bill sets in motion a process that allows the Boards of Governors to override the provisions of the Commission's Series 9. The Council plans to meet with the appropriate legislators to discuss the effects of the bill on faculty tenure and workforce reduction. Dr. Beller announced the Council's annual retreat scheduled for July 13 at Blackwater Falls Conference Center.

C. Advisory Council of Students

The Council did not present a report.

VII. Access

A. Approval of Lindsey Wilson College to Continue to Offer Baccalaureate and Master's Degree Programs at Southern West Virginia Community and Technical College

Dr. Corley Dennison, Vice Chancellor for Academic Affairs, presented an overview of the proposed approval to Lindsey Wilson College. In addition, Ms. Jacquelyn Montgomery, Lindsey Wilson College's Associate Dean of the School of Professional Counseling, spoke of the college's continuous willingness to offer courses in West Virginia.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the request of Lindsey Wilson College to continue to offer a Bachelor of Arts in Human Services and Counseling and a Master of Education in Human Development at Southern West Virginia Community and Technical College extending through June 30, 2022.

Commissioner Allen seconded the motion. Motion passed.

B. Approval of Final Reauthorization of Four-Year Degree-Granting Institutions

Dr. Mark Stotler, Director of Academic Programming, provided an overview of the proposed reauthorization.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the Annual Reauthorization for Bluefield State College, Concord

University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, and West Virginia State University; Alderson Broaddus University, Appalachian Bible College, Bethany College, Catholic Distance University, Davis and Elkins College, Future Generations University, Ohio Valley University, University of Charleston, West Virginia Wesleyan College, Wheeling Jesuit University; American Public University System, Salem University, and Strayer University.

Commissioner Lewis seconded the motion. Motion passed.

C. Review of Institutional Tuition and Fees

Dr. Edward Magee, Vice Chancellor for Finance and Facilities, reported that West Virginia Code requires the Commission to approve any tuition and fee increase greater than ten percent in any one year or where the increase would be more than seven percent per year, averaged over a rolling three-year period calculated by averaging the proposed increase with the increase for the immediate two previous years. He presented a detailed summary of regular tuition and fees for the 2018-2019 academic year.

XIII. Success

A. Update on West Virginia GEAR UP

Dr. Adam Green, Vice Chancellor for Student Affairs, presented an update on West Virginia GEAR UP, the federally funded program that helps students in ten counties prepare to succeed in education and training beyond high school. Vice Chancellor Green introduced James “Ikke” Brooks, WV GEAR UP alum, and current Marshall University student, who will be featured in an upcoming documentary by Roadtrip Nation titled “Beating the Odds: To make it college, you’ve got to bet on yourself.” Mr. Brooks shared his experiences as a GEAR UP student and expressed gratitude to all who have contributed to his success as a graduate of the program.

B. Update on the 2019 System Master Plan Development

Dr. Christopher Treadway, Senior Director of Research and Policy, reported that as the current master plan, *Leading the Way: Access. Success. Impact.* enters its fifth year, work has begun to craft a new plan that addresses the ever-changing needs of the institutions and students. Dr. Treadway stated that the Commission is spearheading a statewide attainment goal campaign “West Virginia’s Climb” which will provide the overarching framework for the new master plan development. He provided a detailed overview of the proposed plan project timeline and related tasks for its completion.

IX. Impact

A. Approval of Soccer Field Complex

Mr. James King, Director of Facilities and Sustainability, provided an overview of the proposed soccer field complex for West Liberty University.

Commissioner Allen moved approval of the following resolution:

Resolved, that the West Virginia Higher Education Policy Commission provisionally confirms the attached informational packet and plans for the West Liberty University Soccer Field Complex.

Commissioner Dailey seconded the motion. Motion passed.

B. Update on Research Programs

Chancellor Hill provided an update on research funding at state institutions. The Division of Science and Research was awarded a \$20M grant from the National Science Foundation in 2015 and also manages award programs that are funded by the state Research Challenge Fund. Chancellor Hill stated that the return on investment of state money spent on research in recent years is nearly 1:200.

X. Approval of Amendments to 401(a) Retirement Plan Document

Ms. Patricia Humphries, Vice Chancellor for Human Resources, provided an overview of the proposed amendments.

Commissioner Lowther moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the amendments to the 401(a) Retirement Plan Document.

Commissioner Lewis seconded the motion. Motion passed.

XI. Review of Institutional Operating Budgets and Approval of Fiscal Year 2019 Institutional Capital Budgets

Vice Chancellor Magee provided an overview of the institutional operating budgets and the proposed approval of the institutional capital budgets.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the Fiscal Year 2019 institutional capital budgets.

Commissioner Dailey seconded the motion. Motion passed.

XII. Approval of Fiscal Year 2019 Higher Education Policy Commission Division Operating Budgets and Higher Education Resource Allocation Projects

Vice Chancellor Magee provided an overview of the proposed Division operating budgets and Higher Education Resource Allocation projects.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the Fiscal Year 2019 Division operating budgets and Higher Education Resource Allocation projects.

Commissioner Schulte seconded the motion. Motion passed.

XIII. Progress Report on Funding Model Research Study

Dr. Treadway reported that House Bill 2815, passed during the 2017 regular session of the West Virginia Legislature, called for the Commission to study the State's methods for allocating general revenue appropriations to public higher education institutions and to provide recommendations for a new funding formula to be implemented as early as Fiscal Year 2019. He provided a detailed summary of the proposal, its development and implementation timeline.

XIV. Approval to Repeal Legislative and Procedural Rules

Chancellor Hill provided an overview of the reason for the proposed repeal of legislative and procedural rules.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the repeal of Title 133, Legislative Rules, Series 15 and Series 53.

Further Resolved, That the West Virginia Higher Education Policy Commission approves the repeal of Title 133, Procedural Rules, Series 8, Series 27, and Series 39.

Commissioner Lewis seconded the motion. Motion passed.

XV. Approval of Proposed Series 62, Procedural Rule, Energy and Water Savings Performance Contracts, Monitoring, Use and Reduction

Mr. King provided an overview of the proposed Series 62.

Commissioner Dailey moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the proposed Series 62, Procedural Rule, Energy and Water Savings Performance Contracts, Monitoring, Use and Reduction, to be filed with the Secretary of State for a thirty-day public comment period, and if no substantive comments are received, that the Commission extends its final approval.

Commissioner Lowther seconded the motion. Motion passed.

XVI. Approval of Revisions to Series 4, Procedural Rule, Rules and Administrative Procedures

Mr. Bruce Walker, General Counsel, provided an overview of the proposed revisions to Series 4.

Commissioner Allen moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the revisions to Series 4, Procedural Rule, Rules and Administrative Procedures, to be filed with the Secretary of State for a thirty-day public comment period, and if no substantive comments are received, that the Commission extends its final approval.

Commissioner Lewis seconded the motion. Motion passed.

XVII. Approval of Revisions to Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents

Mr. Walker provided an overview of the proposed revisions to Series 5.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the revisions to Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents, to be filed with the Secretary of State for a thirty-day public comment period, and if no substantive comments are received, that the Commission extends its final approval.

Commissioner Lewis seconded the motion. Motion passed.

XVIII. Approval of Revisions to Series 7, Emergency and Legislative Rules, West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship

Mr. Brian Weingart, Senior Director of Financial Aid, provided an overview of the proposed revisions to Series 7.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the proposed revisions to Series 7, as an Emergency Rule, West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program, to be filed with the Secretary of State for a thirty-day public comment period, and if no substantive comments are received, that the Commission extends its final approval.

Further Resolved, That the West Virginia Higher Education Policy Commission approves the revisions to Series 7, as a Legislative Rule for filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability and final filing with the Secretary of State if no substantive comments are received at the conclusion of the comment period.

Commissioner Allen seconded the motion. Motion passed.

XIX. Approval of Revisions to Series 54, Procedural Rule, Campus Safety Procedures

Mr. King provided an overview of the proposed revisions to Series 54.

Commissioner Payne moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the revisions to Series 54, Procedural Rule, Campus Safety Procedures, to be filed with the Secretary of State for a thirty-day public comment period, and if no substantive comments are received, that the Commission extends its final approval.

Commissioner Lewis seconded the motion. Motion passed.

XX. Approval of Revisions to Series 59, Procedural Rule, Awarding Undergraduate College Credit for Prior Learning

Vice Chancellor Dennison provided an overview of the proposed revisions to Series 59.

Commissioner Lowther moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the revisions to Series 59, Procedural Rule, Awarding Undergraduate College Credit for Prior Learning, Advanced Placement Credit, and College-Level Examination Program to be filed with the Secretary of State for the thirty-day public comment period and if no substantive comments are received that the Commission extends its final approval.

Commissioner Schulte seconded the motion. Motion passed.

XXI. Executive Session under the Authority of West Virginia Code §6-9A-4 to Discuss Personnel Issues

Commissioner Allen moved to convene in Executive Session under the authority of West Virginia Code §6-9A-4 to discuss personnel issues. Commissioner Payne seconded the motion. Motion passed.

After deliberations, the Commissioners returned to open session. Commissioner Payne moved to rise from Executive Session. Commissioner Dailey seconded the

motion. Motion passed.

Chairman Farrell stated that no decisions were made or actions taken during Executive Session.

XXII. Additional Board Action and Comment

A. Review of Presidential Contract at Shepherd University

Commissioner Lowther moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the presidential appointment letter for Dr. Mary J.C. Hendrix as requested by the Shepherd University Board of Governors.

Commissioner Schulte seconded the motion. Motion passed.

B. Review of Presidential Contract at West Virginia State University

Commissioner Lowther moved approval of the following resolution:

Resolved, That the West Virginia Higher Education Policy Commission approves the presidential appointment of Dr. Anthony Jenkins as requested by the West Virginia State University Board of Governors upon the terms and conditions communicated to it and delegates to the Chancellor the authority, consistent with its discussions, to approve a final contract as to form.

Commissioner Allen seconded the motion. Motion passed.

XXIII. Adjournment

There being no further business, Commissioner Payne moved to adjourn the meeting. Commissioner Allen seconded the motion. Motion passed.

Michael J. Farrell, Chairman

Andrew A. Payne, Secretary

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of Eligibility Requirements for the PROMISE Scholarship Program

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed eligibility requirements for the PROMISE Scholarship Program.

STAFF MEMBER: Brian Weingart

BACKGROUND:

The PROMISE Scholarship is a merit-based financial aid program for West Virginia residents. Students who achieve certain academic goals are eligible to receive annual awards to help offset the cost of tuition and mandatory fees at public or independent institutions in West Virginia. In March 2016, SAT changed their test and scoring. With enough data of students taking the new SAT test, ACT and SAT issued a new concordance in June 2018 that more accurately compares ACT and SAT scores. The new concordance necessitates changes to the SAT scores required to qualify for PROMISE so that it is the equivalent of the ACT scores.

Eligibility Requirements

The current scholarship eligibility requirements require a 3.00 core and overall high school grade point average (GPA) and a 22 ACT composite score with a 20 in each of the four subject areas (English, mathematics, reading, and science). The current minimum SAT score required to qualify for PROMISE is 1100 SAT combined score with a 540 score in evidenced-based reading and writing and a 510 score in mathematics.

Based upon the new concordance, it is recommended that the minimum SAT score to qualify for PROMISE for the Class of 2019 be an 1100 SAT combined score with a 530 score in evidenced-based reading and writing and a 520 score in mathematics.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Report on Master's Degree Programs

INSTITUTIONS: Concord University, Fairmont State University, Shepherd University, West Liberty University, and West Virginia State University

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Mark Stotler

BACKGROUND:

In accordance with West Virginia Code §18B-1A-6(g), Concord University, Fairmont State University, Shepherd University, West Liberty University, and West Virginia State University have submitted reports on the viability of master's degree programs at their respective institutions.

The reporting elements as delineated in West Virginia Code are:

1. The number of programs being offered and the courses offered within each program;
2. The disciplines in which programs are being offered;
3. The locations and times at which courses are offered;
4. The number of students enrolled in the program; and
5. The number of students who have obtained master's degrees through each program.

The first master's level programs at the former baccalaureate-only institutions were approved by the Commission for initial offering in the 2003-2004 academic year. In the past academic year, the number of graduate programs implemented across the five institutions increased from 24 to 26. In addition, the Commission has approved four additional programs that are awaiting implementation. Two programs enrolled their first students, while two programs produced the first graduates. Overall there was an 11.9 percent increase in enrollment and a 22 percent increase in graduates.

Summary comments on notable developments and achievements in the graduate offerings at each institution and a chart that lists number of program enrollees and graduates follow.

Concord University:

- Overall, graduate programs experienced increases in enrollment (4.6 percent) and graduates (3.7 percent).
- Enrollment declines in Education (28.6 percent) and Health Promotions (32.3 percent) were offset by a significant increase in Social Work enrollment (26.1 percent).
- Social Work is the largest graduate program with an enrollment of 232 students. The program produced 68 graduates in 2017-2018, an increase of 94.3 percent.
- The M.Ed. in Education program is accredited through spring 2020.
- All of the programs offered 100 percent of the classes online with the exception of student teaching in the M.Ed. program.

Fairmont State University:

- There was an overall enrollment increase in graduate program enrollment of 13 percent. The five programs produced 95 graduates, an increase of five over the previous year.
- The Architecture program is the only professional degree program in Architecture in the state. An accreditation team visited in April 2018. The official results are pending.
- The MBA program completed research on MBA programs at 31 peer institutions in advance of anticipated programmatic and curriculum recommendations.
- The Graduate Council approval a formal combined BS/MS option in Criminal Justice as a means of enhancing recruitment.
- Courses in the MBA and Architecture programs are primarily offered face-to-face in late afternoon and evening. Coursework for the other three programs are offered primarily online.
- Plans have been developed for two new graduate programs: 1) M.S. Healthcare Management and 2) M.A. National Security and Intelligence. If approved by the Board of Governors and the Commission, implementation is anticipated for fall 2019.

Shepherd University:

- Shepherd University saw small overall declines in enrollment and graduates.
- The Doctor of Nursing Practice program had its first graduates (7).
- In the current report, approximately 17 percent of the classes were identified as being offered online. In addition, a small percentage of the classes were identified as being offered in a hybrid and/or compressed format.
- The M.S. in Data Analytics and Information Systems was implemented and had an initial enrollment of three students.
- The curriculum for Student Development and Administration was updated in response to external reviewers.
- An M.A. in Appalachian Studies was approved by the Board of Governors and will

be submitted to the Commission for approval.

- Graduate certificates are offered in the following areas: 1) Appalachian Studies, 2) Health Administration, 3) Public Management, and 4) Sports Management.

West Liberty University:

- There was a significant increase in overall enrollment (28.7 percent) and graduates (90.9 percent). The gains can primarily be attributed to growth in the MBA program which was implemented in spring 2016. In terms of enrollment, the MBA program is the largest graduate program with 131 students.
- The MA/MS Biology program enrolled its initial class of ten students.
- Three programs are offered at the main campus with traditional delivery: Physician Assistant Studies, Criminology, and Biology.
- The MBA program is offered entirely online. Professional Studies and Education offer courses at the Highlands Center or online. Evening sessions are available at the Highlands Center.
- Two programs that have been recently approved by the Commission – M.S. Dental Hygiene and M.S. Clinical Psychology - have yet to be officially implemented.

West Virginia State University:

- There was an overall increase in enrollment (21.6 percent) and graduates (50 percent).
- Biotechnology faculty received \$1.3 million in new federal and state research and programmatic funding.
- Instructional Leadership remains the largest graduate program and experienced an enrollment increase of 48.4 percent.
- Virtually all of the graduate courses offerings are offered on-campus. Instructional Leadership offers a total online option in addition to a cohort model.
- Criminology discontinued the cohort model and expanded admissions to every semester.
- Two recently approved programs, M.S. Computer Science and M.S. Sports Studies, have yet to be implemented.

**Enrollment Summary for Master's Degree Programs for
Concord University, Fairmont State University, Shepherd University,
West Liberty University and West Virginia State University
2017-2018**

Institution	Program	Term of Implementation	Total Program Enrollment (Degree Seeking)		Graduates		
			2016-17	2017-18	2016-17	2017-18	Overall
Concord University	MEd Education	Fall 2003	112	80	54	23	414
	MAT Teaching	Spring 2012	35	47	5	9	22
	MA Health Promotions	Fall 2012	34	23	13	11	72
	MSW Social Work	Fall 2013	184	232	35	68	158
Concord University Totals			365	382	107	111	666
Fairmont State University	MEd Education	Fall 2003	152	171	41	52	646
	MAT Teaching	Spring 2006	20	24	6	7	110
	MS Criminal Justice	Fall 2005	42	49	22	21	115
	MBA Business Administration	Fall 2006	42	46	19	13	195
	MArch Architecture	Fall 2014	6	6	2	2	5
	MS Human Services <i>Note: Terminated Feb 2012</i>	Fall 2007	-	-	-	-	3
Fairmont State University Totals			262	296	90	95	1074
Shepherd University	MA Curriculum & Instruction	Fall 2003	30	16	9	4	107
	MA Student Development & Administration	Fall 2006	31	31	13	9	126
	MAT Teaching	Fall 2005	35	32	13	8	89
	MM Music Education <i>Note: Terminated Sept 2014</i>	Fall 2005	1	-	4	-	27
	MBA Business Administration	Fall 2005	109	113	25	32	314
	MS Data Analytics and Information Systems	Spring 2018	0	3	0	0	0
	Doctor of Nursing Practice	Fall 2015	23	29	0	7	7
Shepherd University Totals			229	224	64	60	670
West Liberty University	MA Education	Fall 2008	113	112	29	46	223
	MS Physician Assistant Studies	Summer 2012	36	34	18	16	86
	Master of Professional Studies	Fall 2014	42	44	19	17	59
	MS Criminology	Fall 2015	12	19	0	9	9
	Master of Business Administration	Spring 2016	69	131	0	38	38
	MA/MS Biology	Fall 2017	0	10	0	0	0
	MS Dental Hygiene	TBD	-	-	-	-	-
	MA Clinical Psychology	TBD	-	-	-	-	-
West Liberty University Totals			272	350	66	126	415
West Virginia State University	MA Media Studies	Fall 2003	12	8	2	4	45
	MA/MS Biotechnology	Fall 2003	18	24	4	6	69
	MS Criminal Justice Administration	Fall 2011	21	20	8	9	30
	Master of Public Administration	Fall 2015	20	26	2	5	7
	MEd Instructional Leadership	Fall 2016	31	46	0	0	0
	MS Sports Studies	TBD	-	-	-	-	-
	MS Computer Science	TBD	-	-	-	-	-
West Virginia State University Totals			102	124	16	24	151
OVERALL TOTALS			1,230	1,376	343	416	2,976

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of System Master Plan

INSTITUTIONS: All Non-Exempt Institutions

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves reauthorization of the current system Master Plan, “Leading the Way: Access. Success. Impact.” for two additional years.

STAFF MEMBERS: Zornitsa Georgieva and Chris Treadway

BACKGROUND:

Series 49, Legislative Rule, Accountability System, requires that the Commission develop and adopt a new system master plan at least once every five years. The current master plan, “Leading the Way: Access. Success. Impact.” expires at the end of 2018. Efforts to develop a new master plan have been ongoing for several months but in light of Governor Jim Justice’s appointment of a blue ribbon commission to study the structure and governance of the state’s public four-year institutions; the Commission’s subsequent decision to temporarily suspend the search for a permanent chancellor; and the opportunity for non-exempt institutions to continue their work toward achieving goals established at the beginning of the current master plan cycle, Commission staff recommend the current master plan be reauthorized, with revised goals on each of the key quantitative metrics, for a period of up to two years.

Reauthorization of the current master plan requires approval by the Commission and the Legislative Oversight Commission on Education Accountability (LOCEA). Under the revised timeline, non-exempt institutions shall submit to the Commission, prior to October 12, 2018, revised goals on the key quantitative metrics established in the system master plan. It is anticipated that revised master plan goals will be presented to the Commission for final adoption at the November 16, 2018 meeting.

In this presentation, Commission staff will provide an overview of the current system master plan as well as a proposed timeline for its revision and reauthorization.

Proposed Timeline:

August 24, 2018	Proposal presented for approval by the Commission.
August 27 to October 12, 2018	Commission staff will negotiate revisions to institutional goals on quantitative metrics.
September 17-18, 2018	Proposal presented for approval by Legislative Oversight Commission on Education Accountability.
November 16, 2018	Revised metric goals presented for final adoption by the Commission.
January to August 2019	Institutions will review and revise institutional Compacts, as necessary.
September 30, 2019	Deadline for non-exempt institutions to submit revisions to institutional compacts.
October to November 2019	Compact Review Committee reviews and approves institutional compacts.
December 13, 2019	Institutional Compacts are presented for Commission approval.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Update on Statewide Attainment Goal Campaign

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Chris Treadway

BACKGROUND:

Commission staff recently announced a new statewide campaign aimed at increasing the educational attainment rate of working-age West Virginians from 31.4 percent to 60 percent by the year 2030. The “West Virginia’s Climb” campaign will help encourage collaboration among four-year colleges and universities, community and technical colleges, career and technical education centers, K-12, business and industry, government agencies and philanthropic organizations. It will also provide a framework for new college access and student success initiatives.

West Virginia now joins 41 other states that have officially established statewide higher education attainment goals. Work to develop the West Virginia’s Climb campaign was funded with a \$37,500 grant from the Lumina Foundation. In this presentation, Commission staff will provide a progress update on the attainment goal campaign.

Additional information on the campaign is available at www.wvclimb.com.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Report on Campus Safety Plans

INSTITUTION: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Jim King

BACKGROUND:

Under the provisions of Series 54, Campus Safety Procedures, each institution is required to annually review their emergency plans, and each president is to submit an update by June 30. A summary of institutional reports submitted in compliance with this rule is included with this item.

Institutions were asked to provide the following information:

- Current emergency plan with discussion of revisions or progress toward revisions (required annually);
- Internet address where the campus plan can be found on the institution's website;
- Progress update on implementing emergency procedures training;
- Progress update on implementing campus-wide emergency drill; and
- Progress update on implementing a threat assessment team.

The Commission has been actively engaged in promoting best practices regarding campus safety and emergency response since the inception of the rule in 2014. An initial Campus Safety Summit was held in March 2013, and efforts have been ongoing to strengthen partnerships among campuses and organizations such as Red Cross, utility companies, law enforcement and local response agencies to prepare for a range of emergency circumstances by continuously updating procedures, designations and training scenarios.

At the June 22, 2018 Commission meeting, suggested additions to Series 54 were presented that include minimums for a continuation of operations (COOP) plan. Once adopted, each institution will not only have emergency measures in place particular to the campus, but additional methods and processes by which the critical activities performed, especially after a disruption of normal activities, may be continued with little or no interruption of essential services, including orders of succession, delegation of authority, communications continuity and vital records management.

SERIES 54 REPORTING and GUIDANCE

August 24, 2018

INSTITUTION/INTERNET ADDRESS	CURRENT PLAN	TRAINING	EMERGENCY DRILL	THREAT ASSESSMENT TEAM	FLIP CHART or OUTLINE PROCEDURE
Bluefield State https://www.bluefieldstate.edu/resources/public-safety	Yes/Updates in Process	Ongoing - Faculty/Staff and President's Cabinet	Unknown Was Planned SY 2014-15	In Place - Will Meet Prior to Fall Semester	Yes- Both
Concord https://www.concord.edu/student-life/node/25	Yes/Updates In Process	Training Conducted October 2017	Planned for August 2018	In Place - Meets Bi-weekly	Yes - Both
Fairmont www.fairmontstate.edu/campuspolice/emergency-response-guide/emergency-operations-plan	Yes/Updates In Process	Unknown	Conducted on Regular Basis	In Place - Meets on Regular Basis; To meet more often	Yes - Both
Glenville http://www.glenville.edu/mygsc/emergency_info.php	Yes	March 29, 2018, April 4, 2018	None Planned	In Place-Meets Irregularly	Yes - Both
Marshall http://www.marshall.edu/mupd/	Yes-Updated June 2017	Yes	Conducted on Regular Basis	Unknown - None Mentioned	Yes - Both
Shepherd http://www.shepherd.edu/police	Yes - Sporadic Updates	Ongoing - Executive Staff and President's Cabinet	None Mentioned	Multiple Teams Behavioral Intervention; Others as needed	Multiple Procedures Found on Police section of school website
West Liberty https://westliberty.edu/health-and-safety/	Yes - Updated 2016	Unknown	None Mentioned	None Mentioned	Multiple Procedures Found on Police section of school website
WV School of Osteopahtic Medicine	Yes - Updated for 2018/2020	Nothing formal. New employees given ERM	Two fire drills, two chemical spill drills and two active shooter drills held annually	None Mentioned - Emergency Response Only Safety/Security Committee	Emergency Response Manual on website

SERIES 54 REPORTING and GUIDANCE

August 24, 2018

INSTITUTION/INTERNET ADDRESS	CURRENT PLAN	TRAINING	EMERGENCY DRILL	THREAT ASSESSMENT TEAM	FLIP CHART or OUTLINE PROCEDURE
WV State University http://www.wvstateu.edu/Administration/Public-Safety/Emergency-Response/Emergency_Procedures_Guide.pdf.aspx	Yes - Current 2018	Unknown - None Mentioned	Unknown. Last drill July 25, 2014	Unknown	Emergency Response Manual on website
WVU http://police.wvu.edu/emergency-management/emergency-response-plan http://police.wvu.edu/emergency-management	Yes - Last Updated March 2014	Ongoing through UPD	Unknown	None per se. Several topic specific teams in place through UPD	Yes - Flip Chart
WVU Tech https://police.wvutec.edu/emergency-response-plan	Yes - To be Updated March 2016	Unknown	Unknown	Unknown	ERP on line

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Report on West Liberty University Campus Facilities Plan

INSTITUTION: West Liberty University

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Jim King

BACKGROUND:

At the June 22, 2018 meeting, the Commission provisionally confirmed the West Liberty Soccer Field Complex. Confirmation was contingent on the University providing evidence at the next Commission meeting that efforts were made to coordinate and ultimately submit a current campus facilities plan, as soon as practical.

Immediately following the June 22 meeting, the University engaged the architectural firm The Mills Group, specifically for this purpose. University officials and Mr. Vic Greco, AIA from that firm, have been working with Commission staff, assembling information and coordinating efforts to assess and compile data necessary to meet the recommended standards as stated in West Virginia Code.

The amount of time between meetings (June 22 to August 24) is far from adequate to have even a draft version of a plan ready to present. However, it is in progress and should easily be available in draft form in the next 6 to 8 months.

Therefore, West Liberty University has fulfilled the provision as stated – that the campus facilities plan at least be in progress by this meeting, and the Commission be updated regarding the status.

Additionally, financing information for this and other campus projects is included elsewhere in this current agenda.

Background from June 22, 2018 Commission Meeting

West Liberty University has offered women's soccer as a NCAA Division II sanctioned sport since 2012, however men's soccer has remained a club sport. The existing field, while adequate for both teams, will be insufficient to accommodate the expansion of the men's program to sanctioned Division II status beginning in the fall of 2018. A donor has generously pledged \$1 million towards the construction of a new soccer/track facility, with the intent that West Liberty University will provide the remaining \$2.6 million through

institutional funds as well as an increase in enrollment (addition of women's and men's track and men's soccer) towards this project.

The University retained the services of Rucon Construction Consultants in 2017 to arrive at preliminary estimates, as well as estimates from a consultant specializing in turf and turf systems. The University has selected McKinley Associates as the architectural firm responsible for design, coordination and administration of this project. The University elected to begin this project earlier this year to prepare the new facility for the upcoming fall 2018 soccer season.

The addition of this complex, along with the associated landscaping and future new housing for the units being taken, will enable the University to complete this athletic portion of the campus. The location of the new soccer complex has been planned in such a way that it will also provide a field house suitable for West Liberty University as well as visiting teams, and will be designed to support the soccer, track and field and baseball teams. The placement of the new soccer field/track and field house will allow the University to expand and improve the associated parking, which will incorporate a portion of an existing lot and expand it to gain the number of spaces necessary for the proposed complex.

Since there is no current Campus Facilities Plan, this project is not included. However, this project is currently ranked as the highest priority. This is due to the formation of the new soccer team in the fall of 2018 and the expansion of the track team. Currently the track team must travel to all events. This project is also a critical piece of West Liberty University's recruiting and retention efforts.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of West Liberty University Bond Issuance

INSTITUTION: West Liberty University

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves and confirms the 2018 West Liberty University bond issuance as submitted. If the final agreement requires additional conditions, they must be presented to the Chancellor who is hereby delegated the authority to approve the final documents.

STAFF MEMBER: Ed Magee

BACKGROUND:

West Liberty University is requesting approval to issue its Improvement Revenue Bonds, Series 2018 (the “Bonds”). The Bonds are planned to be privately placed with a financial institution. The proceeds of the Bonds will be used to finance certain capital improvement projects on the University’s campus which consist generally of providing additional funds for the construction and equipping of the West Family Athletic Complex, building out the fourth floor of Campbell Hall and financing HVAC and related improvements to Arnett Hall which houses the University’s Zoo Science program. More detailed descriptions of the uses of the proceeds of the Bonds are set forth below.

West Family Athletic Complex:

The University is currently constructing a new multi-sport soccer and track stadium, the West Family Athletic Complex. This facility will include a competition quality 75 x 115 yard NCAA synthetic turf soccer field, competition quality double bend 400 meter track, field events (long jump, triple jump, pole vault, javelin, discuss, shot put, etc.), field lighting, access roadway, parking, entryway, walking paths, etc. This project considered NCAA regulations, University athletic requirements and ADA compliance. Phase I of the project involved early site preparation including the demolition of a series of existing campus housing units and parking area, utility relocations and extensions, new electric service, cut and fill operations to create a level area for the track and field, storm drainage, and associated site work. Phase II consists of the installation of the track and field packages. Construction of this facility has already recruited approximately 80 net students. The estimated cost of the expenditures to be paid for this project from bond proceeds is \$3,000,000.

Buildout of Fourth Floor of Campbell Hall:

West Liberty University constructed a new building in 2012 which houses a chemistry lab, the nursing and physician's assistant programs, and the dental hygiene clinic. A fourth floor, 17,472 square feet, was added to the building during construction for future buildout. The University's College of Science is growing in enrollment and will start a new graduate program in Clinical Psychology which will require clinic space. An Audiology lab for the Speech Pathology program is also needed. This lab will support a future graduate program. In addition, West Liberty University needs a new anatomy lab. Currently, this lab is in Arnett Hall. The lab is used heavily by the nursing and physician's assistant programs, so it makes sense to relocate it in Campbell Hall. This will free up space in Arnett Hall for the growing biology program and for research space. The space is currently a shell and will require design of space and buildout. In addition to the labs mentioned above, space may be allocated to conference rooms or offices. The estimated cost of the buildout is approximately \$1,000,000.

Deferred Maintenance:

The University recently completed a deferred maintenance study. The estimated total deferred maintenance is minimally valued at \$10,000,000. West Liberty University has ten buildings with HVAC equipment at or approaching 40 years old. Weather extremes, particularly in the winter cause many challenges for the University. Arnett Hall is home to the University's Zoo Science program and includes an animal facility. The Zoo Science program is very popular and growing in enrollment. Reliable HVAC and ventilation are crucial to the well-being of the animals. Estimated cost to correct deferred maintenance in Arnett Hall is approximately \$1,000,000.

The Trust Indenture and Security Agreement may be found here:

<http://www.wvhepc.edu/wp-content/uploads/2018/08/WLU-2018-Bond-Trust-Indenture-and-Security-Agreement.pdf>

The bond pricing documents may be found here:

<http://www.wvhepc.edu/wp-content/uploads/2018/08/WLU-2018-Bond-Pricing.pdf>

Policy Commission Approving Resolution

HIGHER EDUCATION POLICY COMMISSION

APPROVING RESOLUTION

**Board of Governors of West Liberty University,
Capital Improvement Revenue Bonds, Series 2018**

Adopted: August 24, 2018

**APPROVING RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION**

RESOLUTION APPROVING AND CONFIRMING THE ISSUANCE OF NOT TO EXCEED \$6,000,000 IN PRINCIPAL AMOUNT OF WEST LIBERTY UNIVERSITY'S CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2018 THE PROCEEDS OF WHICH WILL BE USED TO FINANCE (I) THE COST, DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A NEW MULTI-SPORT SOCCER AND TRACK STADIUM KNOWN AS THE WEST FAMILY ATHLETIC COMPLEX, (II) THE COST, DESIGN, BUILDOUT AND EQUIPPING OF THE FOURTH FLOOR OF THE CAMPBELL HALL OF SCIENCES, (III) CERTAIN CAPITAL IMPROVEMENT PROJECTS ON THE UNIVERSITY'S CAMPUS, (IV) THE FUNDING OF A RESERVE FUND FOR THE SERIES 2018 BONDS AND (V) THE PAYMENT OF COSTS OF ISSUANCE ASSOCIATED WITH THE SERIES 2018 BONDS; MAKING CERTAIN DETERMINATIONS WITH RESPECT TO THE SERIES 2018 BONDS AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO.

WHEREAS, the West Liberty University Board of Governors (the "University Board"), as the governing body of West Liberty University (the "University"), has determined that it is necessary and desirable to issue its Capital Improvement Revenue Bonds, Series 2018 (the "Series 2018 Bonds") for the purpose of financing (i) the cost, design, acquisition, construction and equipping of a new multi-sport soccer and track stadium known as the West Family Athletic Complex, (ii) the cost, design, buildout and equipping of the fourth floor of the Campbell Hall of Sciences, (iii) certain other capital improvements on the University's campus (collectively, items (i) through (iii) are referred to herein as the "2018 Projects"), (iv) the funding of a reserve fund for the Series 2018 Bonds and (v) the payment of Costs of Issuance and related costs;

WHEREAS, issuing the Series 2018 Bonds and completing the 2018 Projects will be in the University's best interests;

WHEREAS, the 2018 Projects are contained in the University's campus development plan as confirmed by the Commission;

WHEREAS, the University has further determined that the Series 2018 Bonds be payable from and secured by a first lien on and pledge of the funds derived from tuition and other fees (which lien and pledge shall be junior and subordinate to the liens and pledges securing the University's University Revenue Bonds, Series 2012 (the "Series 2012 Bonds") and the University's University Revenue Bonds, Series 2013 (the "Series 2013 Bonds" and collectively with the Series 2012 Bonds the "Prior Bonds")), subject to the terms, conditions, limitations and restrictions herein contained;

WHEREAS, accordingly, it is in the best interests of the University to issue the Series 2018 Bonds, the issuance of which will result in added value satisfactory to the President of the

8080814.5

University or the Chairman or Vice Chairman of the University Board, as evidenced by their execution and delivery of a Certificate of Determinations relating to the Series 2018 Bonds;

WHEREAS, pursuant to the authority contained in Chapter 18B, Articles 10 and 19 of the Code of West Virginia, 1931, as amended (together, the “Act”), the University Board is authorized to issue revenue bonds for the purpose of financing the 2018 Projects;

WHEREAS, it is in the best interests of the University for the University Board to issue on behalf of the University not to exceed \$6,000,000 in aggregate principal amount of the Series 2018 Bonds for the purposes, together with other available funds, of (i) financing the 2018 Projects, (ii) funding a reserve fund for the Series 2018 Bonds and (iii) paying the costs of issuance of the Series 2018 Bonds and related costs;

WHEREAS, capitalized terms used and not otherwise defined in this Resolution have the respective meanings given them in the Indenture;

WHEREAS, this Commission and the University Board have the power and authority to execute and deliver the documents required and to carry out the financing described above; and

WHEREAS, this Commission deems it desirable, in keeping with its purposes and in the best interests of the University, to approve the Series 2018 Bonds and the financing of the costs thereof through the issuance of the Series 2018 Bonds by the University Board.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

Section 1. Approval of the Series 2018 Bonds. The financing of the 2018 Projects, a reserve fund for the Series 2018 Bonds and of related expenses, including but not limited to costs of issuance of the Series 2018 Bonds, through the issuance by the University Board of the Series 2018 Bonds in a single series, in an aggregate principal amount not to exceed \$6,000,000 is hereby approved. The Series 2018 Bonds are authorized to be issued for the purposes, together with other available funds, of financing (i) the 2018 Projects, (ii) funding a reserve fund for the Series 2018 Bonds and (iii) paying the costs of issuance of the Series 2018 Bonds and related costs. This Commission hereby finds and determines that an aggregate principal amount not exceeding \$6,000,000 can be paid as to both principal and interest and, as applicable and necessary, reasonable margins for a reserve therefor from the institutional capital fees, auxiliary fees and auxiliary capital fees (collectively, the “Fees”) and all rents, fees, charges and other income received by or accrued to the University from the operation and use of auxiliary facilities (exclusive of Fees and as otherwise required by statute) (together, the “Trust Estate”). The payment of principal of and interest on the Series 2018 Bonds from the Trust Estate is hereby approved. Although the 2018 Projects are anticipated to be substantially as presented to this Commission this day, this Commission recognizes that market conditions, the use of credit enhancement and other factors may affect the amount and terms of such financing.

Without limiting the generality of the foregoing, this Commission hereby finds that it has made the evaluations required by Chapter 18B, Article 19, Subsection 6(c) of the Code of West Virginia, 1931, as amended, and further finds as follows:

8080814.5

A. The University has sufficient debt capacity and the ability to meet the debt service payments for the full term of the Series 2018 Bonds;

B. The University has the capacity to generate revenue sufficient to complete the 2018 Projects;

C. The University has the ability to fund ongoing operations and maintenance; and

D. The Series 2018 Bonds will not materially impact the University's students who will benefit from the proceeds of the Series 2018 Bonds due to enhanced recreational and educational opportunities as a result of the issuance.

Section 3. Special Obligations. This Commission recognizes and agrees that all covenants, stipulations, obligations and agreements of the University Board or the University entered in connection with the Series 2018 Bonds shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the University Board and the University to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon this Commission, the University Board and the University, and their respective successors. No covenant, stipulation, obligation or agreement entered in connection with the 2018 Projects or the Series 2018 Bonds shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of this Commission, the University Board or the University in his or her individual capacity. The Series 2018 Bonds are special obligations of the University Board and the State, payable solely from and secured by the Trust Estate. Each series of the Series 2018 Bonds, together with the interest thereon, is a special obligation of the State and shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Series 2018 Bonds shall be payable only from the Trust Estate pledged for their payment. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Series 2018 Bonds or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith against any official, member, officer or employee of this Commission, the University Board, the University or the State or any person executing the Series 2018 Bonds, and neither members of this Commission or the University Board nor any person executing the Series 2018 Bonds shall be liable personally on the Series 2018 Bonds by reason of the issuance thereof.

Section 4. Incidental Action. The Chancellor, the Chairperson, Vice-Chairperson, Secretary and other appropriate members and officers of this Commission are hereby authorized and directed to execute and deliver any documents, certificates, agreements and instruments and take such other actions as may be required or desirable by the University Board or the University to carry out the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 24th day of August, 2018.

**WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION**

By: _____
Its: _____

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the Higher Education Policy Commission does hereby certify that the foregoing Resolution was duly adopted by the members of the Commission at a regular meeting duly held, pursuant to proper notice thereof, on August 24, 2018, at Charleston, West Virginia, a quorum being present and acting throughout, and which Resolution is a true, correct and complete copy thereof as witness my hand and the seal of the Commission this August 24, 2018.

Secretary, Higher Education Policy
Commission

EXHIBIT A

RESOLUTION OF THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS

RESOLUTION AUTHORIZING THE ISSUANCE BY THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST LIBERTY UNIVERSITY OF ITS CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2018 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$6,000,000 TO FINANCE (I) THE COST, DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A NEW MULTI-SPORT SOCCER AND TRACK STADIUM KNOWN AS THE WEST FAMILY ATHLETIC COMPLEX, (II) THE COST, DESIGN, BUILDOUT AND EQUIPPING OF THE FOURTH FLOOR OF THE CAMPBELL HALL OF SCIENCES, (III) CERTAIN CAPITAL IMPROVEMENT PROJECTS ON THE UNIVERSITY'S CAMPUS, (IV) THE FUNDING OF A RESERVE FUND FOR THE SERIES 2018 BONDS AND (V) THE PAYMENT OF COSTS OF ISSUANCE ASSOCIATED WITH THE SERIES 2018 BONDS; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE WITH RESPECT TO THE BONDS; AUTHORIZING THE EXECUTION OF AND THE ENTERING INTO OF A PURCHASE AGREEMENT WITH [A TO BE DETERMINED FINANCIAL INSTITUTION] FOR THE PURCHASE OF THE SERIES 2018 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND AGREEMENTS IN CONNECTION WITH THE BONDS, INCLUDING BUT NOT LIMITED TO A TAX CERTIFICATE; APPOINTING A TRUSTEE FOR THE BONDS; DELEGATING TO THE PRESIDENT AND THE VICE PRESIDENT FOR FINANCE AND ADMINISTRATION AND THE CHAIRMAN AND VICE-CHAIRMAN OF THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS CERTAIN RESPONSIBILITIES IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS AND THE INVESTMENT OF BOND PROCEEDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTION OF POST ISSUANCE TAX COMPLIANCE PROCEDURES AND TAKING OTHER ACTIONS IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS

WHEREAS, the Board of Governors of West Liberty University (the "Board") proposes to issue a Series of Capital Improvement Revenue bonds (the "Series 2018 Bonds") for the purpose of (i) financing the cost, design, acquisition, construction and equipping of a new multi-sport soccer and track stadium known as the West Family Athletic Complex, (ii) financing the cost, design, buildout and equipping of the fourth floor of the Campbell Hall of Sciences, (iii) financing the costs of certain other capital improvements on the West Liberty University campus (collectively, the "2018 Projects"), (iv) funding a reserve fund for the Series 2018 Bonds and (v) paying Costs of Issuance and related costs (the financing of the foregoing through the issuance of the Series 2017 Bonds as described is referred to herein as the "Bond Financing");

WHEREAS, pursuant to the authority contained in Chapter 18B, Articles 10 and 19 of the Code of West Virginia, 1931, as amended (together, the "Act"), the University Board is authorized to issue revenue bonds for the purpose of financing the 2018 Projects and pledge the

Trust Estate (defined below) as security for the payment of principal of and interest and premium, if any, on such Series 2018 Bonds;

WHEREAS, issuing the Series 2018 Bonds and completing the 2018 Projects will be advantageous to and necessary for the University;

WHEREAS, this Board has determined to issue the Series 2018 Bonds in an aggregate principal amount of not to exceed \$6,000,000 pursuant to the Act and for the purposes set forth above; and

WHEREAS, the Series 2018 Bonds will be issued pursuant to the terms of and secured under a Bond Trust Indenture (the “Indenture”) between the Board and _____ as trustee (the “Trustee”); and

WHEREAS, pursuant to the Act the Board is authorized to pledge certain revenues as security for the payment of principal of and interest and premium, if any, on the Series 2018 Bonds;

WHEREAS, the approval and direction of the Governor of the State of West Virginia will be a condition precedent to certain action regarding the Series 2018 Bonds, and the approval and confirmation of the West Virginia Higher Education Policy Commission will be a condition precedent to the sale and issuance of the Series 2018 Bonds;

WHEREAS, it is expected that the Series 2018 Bonds will be issued pursuant to a Bond Trust Indenture dated as of _____ 1, 2018 (the “Indenture”) between the Board and _____, as bond trustee, and will be privately placed pursuant to a private placement memorandum (“PPM”) or a limited offering memorandum (“LOM”), or privately placed without a PPM or LOM, as the case may be, and will be privately placed by Piper Jaffray & Co. acting as a placement agent for the Board (the “Placement Agent”);

WHEREAS, federal tax law requires that issuers of tax-exempt bonds, such as the Series 2018 Bonds, comply with certain post-issuance compliance requirements to ensure the tax-exempt status of the bonds, and, for the purpose of maximizing the likelihood that such federal income tax requirements are met, the Board desires to approve the form of Post-Issuance Tax Compliance Procedures, attached as Exhibit B hereto; and

WHEREAS, it is in the best interests of the University for this Board to designate the Series 2018 Bonds as qualified tax-exempt obligations within the meaning of Subsection 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”);

WHEREAS, it is in the best interest of this Board to grant to the President and the Vice President for Finance and Administration of the University and the Chairman and Vice-Chairman of the Board, acting together or individually (each, an “Authorized Officer”), the power and authority to establish the final terms and provisions of and execute the Series 2018 Bonds and the Indenture and the Bond Purchase Agreement between the Board and _____ (the “Purchaser”); and

WHEREAS, this Board finds and represents that it has full power and authority to issue the Series 2018 Bonds and to make the respective pledges for the payment thereof as will be set forth in the Indenture and the Series 2018 Bonds, and to execute and deliver the Indenture and such other documents hereinafter described and, on behalf of the owners of the Series 2018 Bonds, to grant a lien on and security interest in the Pledged Revenues, other sources of revenue and funds described in the Indenture, as permitted under the Act, and to execute and deliver such other documents and to take the actions contemplated thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS, AS FOLLOWS:

Section 1. Findings and Determinations. This Board specifically finds and determines as follows:

(a) The Preambles set forth above are incorporated herein as if set forth as findings and determinations in this Section 1.

(b) This Board has full power and authority and has taken or will take by the adoption of this Resolution all actions necessary to undertake the Bond Financing, to authorize its proper officers to execute (and seal, if applicable) and deliver and to perform under the Indenture, the Bond Purchase Agreement or Placement Agreement, and any and all other documents necessary to the Bond Financing, including, but not limited to, the PPM or LOM, a Certificate of Determination of the Board (the "Certificate of Determination"), a Tax Certificate of the Board and the other agreements relating thereto (collectively, the "Bond Documents").

(b) This Resolution is adopted pursuant to and in accordance with the provisions of the Act, and the Series 2018 Bonds shall be issued pursuant to and in accordance with the Act.

(c) The Purchaser is hereby approved as the purchaser of the Series 2018 Bonds. The Authorized Officers are hereby authorized and directed, upon advice of counsel, to enter into an agreement for the sale of the Series 2018 Bonds with the Purchaser.

Section 2. Bonds and Project Authorized. There are hereby authorized, subject to the provisions of this Resolution, the issuance by the Board on behalf of the University of not to exceed \$6,000,000 in aggregate principal amount of one or more series of Series 2018 Bonds for the purposes of (i) financing the 2018 Projects, (ii) funding a reserve fund for the Series 2018 Bonds and (iii) paying Costs of Issuance and related costs. The undertaking of the foregoing is hereby authorized. Any actions taken in connection with the Bond Financing or the 2018 Projects prior to the adoption of this Resolution are hereby approved, ratified and confirmed.

Section 3 Sale; Appointments. It is in the best interests of the State, the Board and the University to sell the Series 2018 Bonds by private sale, as authorized by the Act, to a purchaser by a private placement placed by the Placement Agent on the University's behalf through a Private Placement Agreement that is entered into with or without a PPM or LOM, to be executed and delivered in such form as approved, upon advice of counsel, by an Authorized Officer. Steptoe & Johnson PLLC is hereby appointed as bond counsel for the Series 2018

Bonds. Piper Jaffray & Co. shall act as a placement agent for the Board (the “Placement Agent”). The trustee under the Indenture shall be _____ .

Section 4. Parameters for Terms of Bonds. Anything to the contrary in this Resolution notwithstanding, an Authorized Officer may enter into an agreement for the sale of the Series 2018 Bonds only if the following terms of the Series 2018 Bonds are met: (i) the aggregate principal amount of all series of Series 2018 Bonds may not exceed \$6,000,000 in aggregate principal amount; (ii) the Series 2018 Bonds may not mature later than thirty (30) years from their date of issuance; and (iii) the interest rates or yields for the Series 2018 Bonds shall result in a net interest cost for the Series 2018 Bonds not exceeding five percent (5.00%) per annum. Execution and delivery by an Authorized Officer shall constitute evidence that the Series 2018 Bonds comply with the foregoing requirements. Each Authorized Officer is hereby authorized and directed to set forth for the Series 2018 Bonds the principal amount, the maturities, the interest rates, the redemption provisions, the price, and other terms and details of the Series 2018 Bonds, subject to the parameters set forth above, in the Certificate of Determination to be executed and delivered in connection with the sale of the Series 2018 Bonds. The Certificate of Determination shall also set forth whether interest on the Series 2018 Bonds will be capitalized and whether a debt service reserve fund will be funded. Assuming the parameters set forth above are met, the Certificate of Determination shall have full force and effect as if adopted as a part of this Resolution.

Section 5. Authorization of Bond Documents; Approval of Indenture. The execution, delivery and performance of the Bond Documents are hereby authorized. The Board hereby approves the Indenture, substantially in the form attached as Exhibit C hereto, subject to any changes, insertions, variations or omissions as may be deemed necessary and approved by an Authorized Officer, with his or her signature on such Bond Document to evidence conclusively such approval. Without limiting the generality of the foregoing, (a) the preparation and distribution of the PPM or LOM, as the case may be, are hereby authorized in such form as may be approved by the Authorized Officers, such approval to be evidenced by the execution by an Authorized Officer of such final PPM or LOM, as the case may be; and (b) the delivery by the Placement Agent to prospective purchasers of the Series 2018 Bonds of the PPM or LOM, if any, as the case may be, is hereby authorized and approved.

Section 6. Authorized Officers; Other Documents and Actions. Each of the Chairman and Vice Chairman of the Board and the President and Vice President for Finance and Administration of the University (each, an “Authorized Officer”) is hereby authorized and directed to proceed with the Bond Financing, including but not limited to determining the forms, terms and provisions of and executing and delivering, as applicable, the Bond Documents and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Indenture.

Section 7. Special Obligations. The Series 2018 Bonds shall be secured by the respective pledges effected by the Indenture and shall be payable and secured by a pledge of the Trust Estate, as defined therein, and any other funds or assets described therein. Each series of the Series 2018 Bonds, together with the interest thereon, is a special obligation of the State and shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Series 2018 Bonds shall be payable only from the respective revenues

and funds pledged for their payment as provided in the Indenture. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Series 2018 Bonds or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith against any official, member, officer or employee of the Board or the State or any person executing the Series 2018 Bonds, and neither members of the Board nor any person executing the Series 2018 Bonds shall be liable personally on the Series 2018 Bonds by reason of the issuance thereof.

Section 8. Post-Issuance Tax Compliance Procedures. The Post-Issuance Tax Compliance Procedures substantially in the form attached as Exhibit B hereto are hereby approved. The Vice President for Finance and Administration of the University is hereby appointed as Compliance Manager for the Post-Issuance Tax Compliance Procedures.

Section 9. Qualified Tax-Exempt Obligations. The Board hereby designates the Series 2018 Bonds as “qualified tax-exempt obligations” for purposes of paragraph (3) of Section 265(b) of the Internal Revenue Code and covenants that the Series 2018 Bonds will not constitute private activity bonds as defined in Section 141 of the Code and as determined in accordance with Section 265(b)(3) of the Internal Revenue Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Internal Revenue Code) from gross income for federal income taxes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Internal Revenue Code), including the Series 2018 Bonds, shall be issued by the Board during the calendar year 2018, all as determined in accordance with the Internal Revenue Code.

Section 10. Formal Actions. This Board hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board that resulted in formal action were in meetings open to the public, in full compliance with all applicable legal requirements.

Section 11. Incidental Actions. Each of the Authorized Officers is hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates, and to take such other actions as may be necessary or appropriate for the acquisition, construction and equipping of the 2018 Projects, the issuance and sale of the Series 2018 Bonds and the use of the proceeds thereof, the execution and delivery of the Bond Documents, and carrying out the Bond Financing and any other transactions contemplated therein and herein, all in accordance with the applicable provisions of the Code of West Virginia of 1931, as amended. The execution, delivery and due performance of agreements relating to the Bond Financing, the 2018 Projects, the Series 2018 Bonds, the Bond Documents and all documents and instruments required in connection therewith are hereby in all respects approved, authorized, ratified and confirmed, including any and all acts heretofore taken in connection with the Bond Financing or the 2018 Projects.

Section 12. Effect. This Resolution shall go into effect immediately upon adoption.

Adopted this 22nd day of August, 2018.

WEST LIBERTY UNIVERSITY
BOARD OF GOVERNORS

By: _____
Its Chair

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the Board of Governors of West Liberty University does hereby certify that the foregoing Resolution was duly adopted by the members of the Board at a regular meeting duly held, pursuant to proper notice thereof, on August 22, 2018, at West Liberty, West Virginia, a quorum being present and acting throughout, and which Resolution is a true, correct and complete copy thereof as witness my hand this ____ day of _____, 2018.

Secretary, Board of Governors of West Liberty University

EXHIBIT A

CERTIFICATE OF DETERMINATIONS

The undersigned, [Chair or Vice-Chair of the West Liberty University Board of Governors (the "Board")][President or Vice President for Finance and Administration of West Liberty University], in accordance with a Bond Resolution adopted by the Board on August 22, 2018 (the "Resolution"), with respect to the \$_____ West Liberty University Board of Governors Capital Improvement Revenue Bonds, Series 2018 (the "Series 2018 Bonds"), hereby finds and determines as follows:

1. He/she is an Authorized Officer within the meaning of the Resolution.
2. The Series 2018 Bonds shall be dated September ___, 2018.
3. The Series 2018 Bonds shall be issued in the aggregate principal amount of \$_____.
4. Such principal amount does not exceed \$6,000,000, being the maximum principal amount authorized by the Resolution.
5. The Series 2018 Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
6. The Series 2018 Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein, which rates result in a net interest cost not exceeding five percent (5%) per annum.
7. [The Series 2018 Bonds shall be subject to optional redemption at any time without premium or penalty.]
8. The Series 2018 Bonds shall be sold to _____ (the "Purchaser") at an aggregate purchase price of \$_____ (representing par value, [less a bank origination fee of \$_____]).
9. The proceeds of the Series 2018 Bonds shall be applied as set forth on Schedule 2 attached hereto and incorporated herein, including any additional determinations deemed necessary by the [Authorized Officer].

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2018 Bonds are within the limitations prescribed by the Resolution, and the Series 2018 Bonds may be issued with such terms and conditions as authorized by the Resolution.

WITNESS my signature this day of _____, 2018.

WEST LIBERTY UNIVERSITY
BOARD OF GOVERNORS

By: _____
Its: _____

Schedule 1

Maturities

Mandatory Redemption.

Schedule 2

Application of Proceeds and Other Funds.

[EXHIBIT WILL SHOW APPLICATION OF BOND PROCEEDS]

EXHIBIT B

POST ISSUANCE COMPLIANCE PROCEDURES

WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED OBLIGATIONS

The West Liberty University Board of Governors, a public body and agency of the State of West Virginia (the “Issuer”), has issued and may in the future issue tax-exempt obligations (including, without limitation, bonds, notes, loans, leases and certificates) (together, “tax-advantaged obligations”) that are subject to certain requirements under the Internal Revenue Code of 1986, as amended (the “Code”).

The policies and procedures contained herein (the “Procedures”) have been established in order to ensure that the Issuer complies with the requirements of the Code that are applicable to its tax-advantaged obligations. The Procedures, coupled with requirements contained in the arbitrage and tax certificate or other operative documents (the “Tax Certificate”) executed at the time of issuance of the tax-advantaged obligations, are intended to constitute written procedures for ongoing compliance with the federal tax requirements applicable to the tax-advantaged obligations and for timely identification and remediation of violations of such requirements.

A. GENERAL MATTERS.

1. Responsible Officer. The Vice President for Finance and Administration of West Liberty University will have overall responsibility for ensuring that the ongoing requirements described in the Procedures are met with respect to tax-advantaged obligations (the “Responsible Officer”).
2. Establishment of Procedures. The Procedures will be included with other written procedures of the Issuer.
3. Identify Additional Responsible Employees. The Responsible Officer shall identify any additional persons who will be responsible for each section of the Procedures, notify the current holder of that office of the responsibilities, and provide that person a copy of the Procedures. (For each section of the Procedures, this may be the Responsible Officer or another person who is assigned the particular responsibility.)
 - a. Upon employee or officer transitions, new personnel should be advised of responsibilities under the Procedures and ensure they understand the importance of the Procedures.
 - b. If employee or officer positions are restructured or eliminated, responsibilities should be reassigned as necessary to ensure that all Procedures have been appropriately assigned.

4. Training Required. The Responsible Officer and other responsible persons shall receive appropriate training that includes the review of and familiarity with the contents of the Procedures, review of the requirements contained in the Code applicable to each tax-advantaged obligation, identification of all tax-advantaged obligations that must be monitored, identification of all facilities (or portions thereof) financed with proceeds of tax-advantaged obligations, familiarity with the requirements contained in the Tax Certificate or other operative documents contained in the transcript, and familiarity with the procedures that must be taken in order to correct noncompliance with the requirements of the Code in a timely manner.
5. Periodic Review. The Responsible Officer or other responsible person shall periodically review compliance with the Procedures and with the terms of the Tax Certificate to determine whether any violations have occurred so that such violations can be timely remedied through the “remedial action” regulations or the Voluntary Closing Agreement Program available through the Internal Revenue Service (“IRS”) (or successor guidance). Such periodic review shall occur at least annually.
6. Change in Terms. If any changes to the terms of the tax-advantaged obligations are contemplated, bond counsel should be consulted. Such modifications could jeopardize the status of tax-advantaged obligations.

B. IRS INFORMATION RETURN FILING. The Responsible Officer will confirm that bond counsel has filed the applicable information reports (such as Form 8038-G) for such issue with the IRS on a timely basis, and maintain copies of such form including evidence of timely filing as part of the transcript of the issue. The Responsible Officer shall file the IRS Form 8038-T relating to the payment of rebate or yield reduction payments in a timely manner as discussed in Section F.12. below. The Responsible Officer shall also monitor the extent to which the Issuer is eligible to receive a refund of prior rebate payments and provide for the timely filing for such refunds using an IRS Form 8038-R.

C. USE OF PROCEEDS. The Responsible Officer or other responsible person shall:

1. Consistent Accounting Procedures. Maintain or confirm maintenance of clear and consistent accounting procedures for tracking the investment and expenditures of proceeds, including investment earnings on proceeds.
2. Reimbursement Allocations at Closing. At or shortly after closing of an issue, ensure that any allocations for reimbursement expenditures comply with the Tax Certificate.
3. Timely Expenditure of Proceeds. Monitor that sale proceeds and investment earnings on sale proceeds of tax-advantaged obligations are spent in a timely fashion consistent with the requirements of the Tax Certificate.
4. Requisitions. Utilize or confirm the utilization of requisitions to draw down proceeds, and ensure that each requisition contains (or has attached to it) detailed

information in order to establish when and how proceeds were spent; review requisitions carefully before submission to ensure proper use of proceeds to minimize the need for reallocations.

5. Final Allocation. Ensure that a final allocation of proceeds (including investment earnings) to qualifying expenditures is made if proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the proceeds as spent as shown in the accounting records for draws and project expenditures). An allocation other than on the basis of “direct tracing” is often made to reduce the private business use of bond proceeds that would otherwise result from “direct tracing” of proceeds to project expenditures. *This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than five years and 60 days after the date the tax-advantaged obligations are issued (or 60 days after the issue is retired, if earlier).* Bond counsel can assist with the final allocation of proceeds to project costs. Maintain a copy of the final allocation in the records for the tax-advantaged obligation.
6. Maintenance and Retention of Records Relating to Proceeds. Maintain or confirm the maintenance of careful records of all project and other costs (e.g., costs of issuance, credit enhancement and capitalized interest) and uses (e.g., deposits to a reserve fund) for which proceeds were spent or used. These records should be maintained separately for each issue of tax-advantaged obligations for the period indicated under Section H. below.

D. MONITORING PRIVATE BUSINESS USE. The Responsible Officer or other responsible person shall:

1. Identify Financed Facilities. Identify or “map” which outstanding issues financed which facilities and in what amounts.
2. Review of Contracts with Private Persons. Review all of the following contracts or arrangements with non-governmental persons or organizations or the federal government (collectively referred to as “private persons”) with respect to the financed facilities which could result in private business use of the facilities:
 - a. Sales of financed facilities;
 - b. Leases of financed facilities;
 - c. Management or service contracts relating to financed facilities;
 - d. Research contracts under which a private person sponsors research in financed facilities; and
 - e. Any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) granted to a private person with respect to financed facilities.

3. Bond Counsel Review of New Contracts or Amendments. Before amending an existing agreement with a private person or entering into any new lease, management, service, or research agreement with a private person, consult bond counsel to review such amendment or agreement to determine whether it results in private business use.
4. Establish Procedures to Ensure Proper Use and Ownership. Establish procedures to ensure that financed facilities are not used for private use without written approval of the Responsible Officer or other responsible person.
5. Analyze Use. Analyze any private business use of financed facilities and, for each issue of tax-advantaged obligations, determine whether the 10 percent limit on private business use (5 percent in the case of “unrelated or disproportionate” private business use) is exceeded, and contact bond counsel or other tax advisors if either of these limits appears to be exceeded.
6. Remediation if Limits Exceeded. If it appears that private business use limits are exceeded, immediately consult with bond counsel to determine if a remedial action is required with respect to nonqualified tax-advantaged obligations of the issue or if the IRS should be contacted under its Voluntary Closing Agreement Program. If tax-advantaged obligations are required to be redeemed or defeased in order to comply with remedial action rules, such redemption or defeasance must occur within 90 days of the date a deliberate action is taken that results in a violation of the private business use limits.
7. Maintenance and Retention of Records Relating to Private Use. Retain copies of all of the above contracts or arrangements (or, if no written contract exists, detailed records of the contracts or arrangements) with private persons for the period indicated under Section H. below.

E. LOAN OF BOND PROCEEDS. Consult bond counsel if a loan of proceeds of tax-advantaged obligations is contemplated. If proceeds of tax-advantaged obligations are permitted under the Code to be loaned to other entities and are in fact so loaned, require that the entities receiving a loan of proceeds institute policies and procedures similar to the Procedures to ensure that the proceeds of the loan and the facilities financed with proceeds of the loan comply with the limitations provided in the Code. Require the recipients of such loans to annually report to the Issuer ongoing compliance with the Procedures and the requirements of the Code.

F. ARBITRAGE AND REBATE COMPLIANCE. The Responsible Officer or other responsible person shall:

1. Review Tax Certificate. Review each Tax Certificate to understand the specific requirements that are applicable to each tax-advantaged obligation issue.
2. Arbitrage Yield. Record the arbitrage yield of the issue, as shown on IRS Form 8038-G or other applicable form. If the tax-advantaged obligations are variable

rate, yield must be determined on an ongoing basis over the life of the tax-advantaged obligations as described in the Tax Certificate.

3. Temporary Periods. Review the Tax Certificate to determine the “temporary periods” for each issue, which are the periods during which proceeds of tax-advantaged obligations may be invested without yield restriction.
4. Post-Temporary Period Investments. Ensure that any investment of proceeds after applicable temporary periods is at a yield that does not exceed the applicable yield, unless yield reduction payments can be made pursuant to the Tax Certificate.
5. Monitor Temporary Period Compliance. Monitor that proceeds (including investment earnings) are expended promptly after the tax-advantaged obligations are issued in accordance with the expectations for satisfaction of three-year or five-year temporary periods for investment of proceeds and to avoid “hedge bond” status.
6. Monitor Yield Restriction Limitations. Identify situations in which compliance with applicable yield restrictions depends upon later investments (e.g., the purchase of 0 percent State and Local Government Securities from the U.S. Treasury for an advance refunding escrow). Monitor and verify that these purchases are made as contemplated.
7. Establish Fair Market Value of Investments. Ensure that investments acquired with proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintaining records to demonstrate satisfaction of such safe harbors. Consult the Tax Certificate for a description of applicable rules.
8. Credit Enhancement, Hedging and Sinking Funds. Consult with bond counsel before engaging in credit enhancement or hedging transactions relating to an issue, and before creating separate funds that are reasonably expected to be used to pay debt service. Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions that are entered into relating to an issue.
9. Grants/Donations to Governmental Entities. Before beginning a capital campaign or grant application that may result in gifts that are restricted to financed projects (or, in the absence of such a campaign, upon the receipt of such restricted gifts), consult bond counsel to determine whether replacement proceeds may result that are required to be yield restricted.
10. Bona Fide Debt Service Fund. Even after all proceeds of a given issue have been spent, ensure that debt service funds, if any, meet the requirements of a “bona fide debt service fund,” i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the

fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year.

11. Debt Service Reserve Funds. Ensure that amounts invested in reasonably required debt service reserve funds, if any, do not exceed the least of: (i) 10 percent of the stated principal amount of the tax-advantaged obligations (or the sale proceeds of the issue if the issue has original issue discount or original issue premium that exceeds 2 percent of the stated principal amount of the issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual debt service on the issue; or (iii) 125% of average annual debt service on the issue.
12. Rebate and Yield Reduction Payment Compliance. Review the arbitrage rebate covenants contained in the Tax Certificate. Subject to certain rebate exceptions described below, investment earnings on proceeds at a yield in excess of the yield (i.e., positive arbitrage) generally must be rebated to the U.S. Treasury, even if a temporary period exception from yield restriction allowed the earning of positive arbitrage.
 - a. Ensure that rebate and yield reduction payment calculations will be timely performed and payment of such amounts, if any, will be timely made. Such payments are generally due 60 days after the fifth anniversary of the date of issue, then in succeeding installments every five years. The final rebate payment for an issue is due 60 days after retirement of the last obligation of the issue. The Issuer should hire a rebate consultant if necessary.
 - b. Review the rebate section of the Tax Certificate to determine whether the "small issuer" rebate exception applies to the issue.
 - c. If the 6-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the Tax Certificate) may apply to the tax-advantaged obligations, ensure that the spending of proceeds is monitored prior to semiannual spending dates for the applicable exception.
 - d. Make rebate and yield reduction payments and file Form 8038-T in a timely manner.
 - e. Even after all other proceeds of a given issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Arbitrage Rebate covenants contained in the Tax Certificate).
13. Maintenance and Retention of Arbitrage and Rebate Records. Maintain records of investments and expenditures of proceeds, rebate exception analyses, rebate

calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions for the period indicated in Section G. below.

- G. RECORD RETENTION.** The Responsible Officer or other responsible person shall ensure that for each issue of obligations, the transcript and all records and documents described in these Procedures will be maintained while any of the obligations are outstanding and during the three-year period following the final maturity or redemption of that issue, or if the obligations are refunded (or re-refunded), while any of the refunding obligations are outstanding and during the three-year period following the final maturity or redemption of the refunding obligations.

EXHIBIT C
FORM OF INDENTURE

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Progress Report on Funding Model Research Study

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Chris Treadway

BACKGROUND:

House Bill 2815, passed during the 2017 regular session of the West Virginia Legislature, called for the Commission to study the State's methods for allocating general revenue appropriations to public higher education institutions and to provide recommendations for a new funding formula to be implemented as early as Fiscal Year 2019. From June through December 2017, Commission staff: conducted extensive background research on best practices in higher education funding; reviewed funding models used in other states; consulted with legislative leaders, state policymakers, national experts in higher education policy and finance, and institutional leaders; identified best practices in performance- and outcomes-based funding; conducted mathematical modeling exercises; and developed a draft framework for a fair and objective method of distributing general revenue appropriations to public institutions. The results of this effort, along with a recommendation for an extended development and implementation timeline, were shared in a progress report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance on December 29, 2017.

At the March 23, 2018 meeting of the Commission, staff presented a proposal for a funding formula that allocates general revenue appropriations based upon three primary factors: The number of weighted credit hours attempted by West Virginia resident students in an academic year; the number of bachelor's and associate degree-seeking West Virginia resident students who are on track for on-time degree completion; and the number of degrees awarded to West Virginia resident students and those non-resident students who remain in West Virginia after graduation. A copy of the March 23 presentation is available for review at:

<http://www.wvhepc.edu/resources/reports-and-publications/>

The public was invited to review the proposal and submit formal written comments between March 23 and April 27, 2018. The Commission received more than 1,300 individual emails during the public comment period. Approximately 1,250 of these were generally supportive of the proposed framework. The other approximately 50 were written

in opposition to the proposal, or provided recommendations for potential changes to the framework.

Commission staff will present to Commissioners a summary and analysis of the feedback submitted during the public comment period, along with recommendations for modifications to the proposal based on public feedback.

All public comments are available for review on the Commission's website at:

http://www.wvhepc.edu/wp-content/uploads/2018/05/HEPC_FundingModelComments_25May2018.pdf

These documents are provided in their original form, with personal contact information (phone numbers and email addresses) redacted. Comments are organized into two groups: Featured/Noteworthy Comments (beginning on page 1) and General Comments (beginning on page 141).

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Presentation of Report from the National Center for Higher Education Management Systems

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Chris Treadway

BACKGROUND:

In a May 15, 2017, letter, Governor Jim Justice directed the Commission to conduct a formal study of the sustainability of the state's higher education system under its current structure. Using funding provided through a grant from the Benedum Foundation, the Commission contracted the services of researchers from the National Center for Higher Education Management Systems (NCHEMS), who conducted the study on the agency's behalf.

In the months that followed, the NCHEMS research team:

1. Completed an extensive analysis of demographic, enrollment and workforce trends;
2. Hosted two meetings of the Higher Education Sustainability Study Advisory Council, a group consisting of administrators and faculty from the state's regional four-year institutions; and
3. Conducted in-person or telephone interviews with the executive leadership teams of each institution, key legislative leaders and their staffs, Commission members, Commission staff, and representatives of the Governor's Office.

The research team determined, through the course of the study, that emphasis should be placed on the most vulnerable institutions in the four-year public sector; that is, those institutions in economically depressed regions of the state and those facing significant enrollment or financial challenges. The report focuses primarily on the sustainability of those institutions. Additional context and the research team's recommendations are provided in the final draft of the research report, which is titled "*Sustaining Public Higher Education Services in Every Region of West Virginia*" and is included as part of this agenda item.

During the July 10, 2018, meeting of the Commission, NCHEMS representatives discussed the methodology of the study and provided a detailed explanation of each of the recommendations in the draft report.

In this presentation, agency staff will submit the final draft of the NCHEMS report to the Commission.

Sustaining Public Higher Education Services in Every Region of West Virginia

The Future of the Regional Comprehensive Colleges and Universities



The National Center for Higher Education Management Systems

August 6, 2018

Contents

Executive Summary	3
Introduction.....	5
Project rationale and focus.....	5
Approach to project.....	5
Analytic Findings.....	6
Demography.....	6
Enrollment and participation.....	6
Degree production and future West Virginia workforce needs.....	10
Economic realities.....	12
Institutional financial condition	15
Impact of Changes in Governance on Regional Institutions.....	16
Long-standing issues.....	16
History of changes	16
Impact of changes on authority and powers of the West Virginia Higher Education Policy Commission	18
Implications of changes for regional institutions	18
Observations from Interviews.....	19
Sustainability.....	19
Institutional Leadership	20
Economies-of-scale through shared services	21
Collaboration in academic program delivery.....	22
Immediate issue: the future of those regional institutions in greatest fiscal distress	23
Criteria for solution.....	23
Recommendations.....	24
Endnotes.....	27
Appendix.....	28

Executive Summary

Access to higher education opportunity is threatened in several regions in West Virginia, largely because the institutions serving these regions are struggling to survive. In May 2017, Governor Justice requested that the Higher Education Policy Commission conduct a study to examine the question of how to sustain higher education opportunity in each region of West Virginia. (Governor Justice’s letter is attached as an appendix.) In turn, the HPEC sought assistance from the National Center for Higher Education Management Services (NCHEMS) to undertake that project. The project’s focus is on the regional institutions (Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, and West Virginia State University). This report addresses these challenges and offers recommendations to the Higher Education Policy Commission and the State of West Virginia about how they may respond to them in a way that preserves access to higher education in all parts of the state and meets state goals for boosting educational attainment and meeting workforce needs.

To address this topic, NCHEMS analyzed data from public and state sources to develop a baseline understanding of the scope and shape of the issues. Then using these data, NCHEMS led focus groups with the leadership teams from each of the regional institutions to gather their insights about the nature of the challenges they are confronting, the solutions they are pursuing, and the roles played by the Higher Education Policy Commission and by other West Virginia institutions.

NCHEMS finds that unfavorable demographic conditions make maintaining enrollment levels in public institutions difficult in all parts of the state. Nevertheless, the conditions are considerably worse in parts of the state where institutions are most vulnerable and median income levels are lowest. Yet the need to ensure that all West Virginians have access to a quality and affordable postsecondary education is more important than ever, and geographic access is especially important. Recent changes to the authority of the West Virginia Higher Education Policy Commission have complicated the state’s ability to maintain a balance among institutional missions and promote state-level advocacy for serving vulnerable student populations and meet regional workforce demands. This diminished authority has also contributed to a lack of coordination among regional institutions and missed opportunities for collaboration to achieve greater operational efficiencies and improved educational delivery.

Drawing on these observations, NCHEMS suggests that the following criteria will be essential to any effective solutions:

- Sustainability requires action at multiple levels in order to foster sharing both “back” office and academic capacity statewide
 - Each institution
 - Among institutions serving the same region or population
 - West Virginia Higher Education Policy Commission
 - State government (Department of Administrative Services)
- Reform of finance policy is critical to:

- Align resource allocation with institutional mission, scale and state priorities
- Address inequities in allocation of state appropriations
- Provide incentives for collaboration
- Statewide leadership and coordination is essential to:
 - Maintain differentiation of mission among the state’s public institutions (e.g., research universities, regional access-oriented institutions, and community and technical colleges)
 - Ensure geographic balance to ensure cost-effective delivery of higher education to all regions of the state
 - Support leadership at the institutional level for needed changes
 - Develop essential shared services
 - Lead in increasing academic collaboration
 - Advocate for changes in state policies (including DAS) that support sustainability

Finally, NCHEMS’ recommendations for specific steps to take to address the sustainability challenges in West Virginia’s regional institutions include:

- Consolidate governance of the two most at-risk institutions, Bluefield State College and Concord University.
- Reinstate critical powers to the West Virginia Higher Education Policy Commission that are essential for the effective coordination of statewide postsecondary policy, including:
 - Power to approve presidential hiring, compensation, and firing, at least at the most financially threatened institutions.
 - Program approval and termination.
 - Approval of all capital projects.
 - Authority to consolidate administrative, financial, or academic functions among or between institutions.
- Implement low-cost strategies such as an online course clearinghouse and delivery platform.
- Support the strengthening of local governance of regional institutions
- Distinguish the Commission’s policy leadership functions from its functions as provider of shared services to institutions.

Recommendations to implement over the longer term include:

- Re-establish the Commission as the coordinating body for all public higher education in West Virginia.
- Establish a state regional college and university governing board.
- Initially retain local board of governors for less financially vulnerable institutions, but with powers explicitly delegated by the Commission.

Introduction

Project rationale and focus

Access to higher education opportunity is threatened in several regions of West Virginia, largely because the institutions serving these regions are struggling to survive. Against this backdrop, the Higher Education Policy Commission requested the National Center for Higher Education Management Systems (NCHEMS) to undertake a project to examine the question of how to sustain higher education opportunity in each region of West Virginia. The project's focus is on the following seven colleges and universities: Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, and West Virginia State University (identified as "regional institutions" in this report).

In the conduct of the project, NCHEMS considered other public colleges and universities (West Virginia University, Marshall University, and the West Virginia Community and Technical College System) primarily in terms of their impact on the regional institutions.

The project focused on these institutions for these reasons:

- Most of the regional institutions, especially Glenville State College, Bluefield State College and Concord University, are critical to higher education opportunity for the students and population of their region. If one of these institutions were to close, it would have a major impact on its region. Historic disparities persist among the state's regions in poverty, educational attainment and postsecondary education participation rates. The regions served by these institutions are particularly disadvantaged.
- Several of the institutions draw their students primarily from counties with the highest poverty rates in West Virginia and enroll a major proportion of the high school graduates from these counties. Higher education institutions serving counties with high concentrations of poverty face major challenges in serving students with significant deficiencies in preparation for college-level academic success.
 - Bluefield State College draws 72 percent of its students from McDowell and Mercer counties. McDowell County has 35 percent of the population below the poverty level (highest in the state) and Mercer County has 22 percent compared to the statewide average of 18 percent (US Census Bureau, 2010-2014 American Community Survey 5-Year Estimates).
 - Glenville State College is located in Gilmer County with the second-highest level of poverty (30 percent). It enrolls 13 percent of its students from this county but this 13 percent constitutes 73 percent of the high school graduates in the county. Glenville State College is the dominant public provider in several other counties with high levels of poverty (Braxton, Calhoun, and Clay).
- These regional institutions are the most vulnerable among West Virginia's public four-year institutions for reasons outlined below.

Approach to project

In carrying out this project, NCHEMS conducted the following activities:

- Analysis of data on demographic, enrollment and workforce trends
- Interviews
 - Leadership teams from each institution
 - Legislative leaders and staff
 - Office of the Governor
 - Higher Education Policy Commission:
 - Chair
 - Senior Staff

The information gleaned from these activities formed the basis for the recommendations presented later in this report.

Analytic Findings

Demography

The state of West Virginia has experienced steady population decline over the past decade and projections through 2030 show that this trend will continue.¹ These trends are having a major impact on resident student enrollment in higher education and on the regional institutions in particular.

- The population under age 20, the population primarily served by the regional institutions, is projected to decrease by 4.5 percent. The biggest decline will be in the workforce age group of 25-64 (12.3 percent).
- Significant regional difference: 44 of 55 counties will experience a decline in population; most of the growth will be concentrated in the north-central and northeastern counties.
- The number of high school graduates remained relatively stable over the past decade; however, the Western Interstate Commission for Higher Education report, *Knocking at the College Door*, projects a steady decline in the period from 2014-15 to 2030-31.²

Enrollment and participation

Enrollments are declining across the public higher education sector. This decline is intensifying competition for a shrinking pool of youth and adults. Because of the direct relationship between enrollments and institutional revenues, these trends are threatening the long-term financial viability of the regional institutions. Over the most recent five-year period for which data are available (2010-2011 to 2014-2015) public higher education annualized full-time enrollment decreased 10 percent.³ Resident enrollment (approximately two-thirds of the enrollment) decreased 15 percent, reflecting the population dynamics summarized above. A slight increase in non-resident enrollment (1.4 percent) partially offset the decline in resident enrollment.

The enrollment decline among regional institutions varied depending on the institution's location. Those in areas with population growth (urban areas, the north-central region and eastern panhandle) fared better than those in southern West Virginia and isolated rural areas.

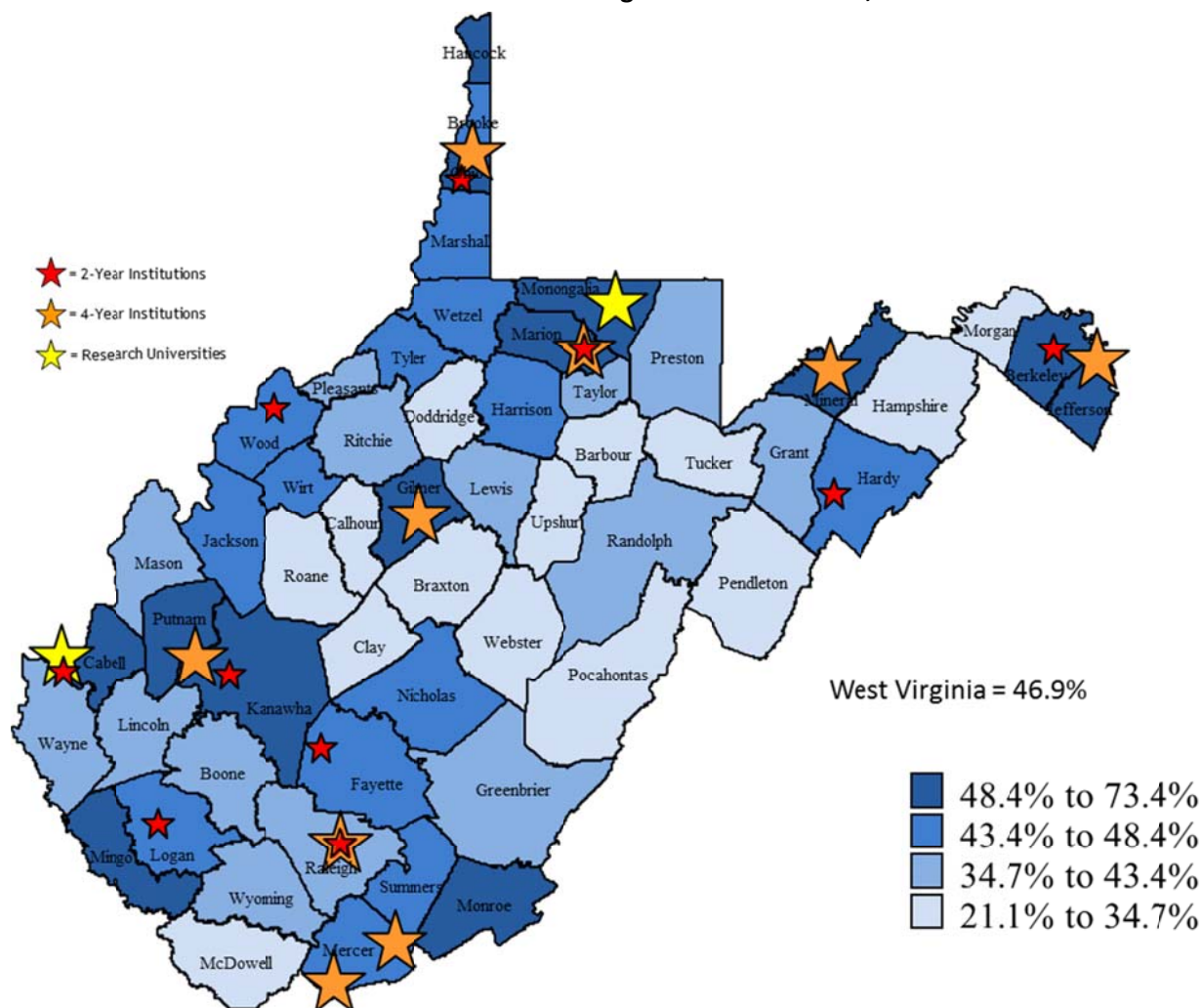
- Two institutions experienced decreases of over 20 percent: Bluefield State College (27 percent) and Glenville State College (23 percent),
- Two institutions experienced decreases from 15 percent to 18 percent: Concord University (15 percent) and Fairmont State University (18 percent).
- Three institutions experienced smaller decreases: West Liberty University (5 percent), Shepherd University (6 percent), and West Virginia State University (5 percent). It is notable that these three are located in the only parts of the state projected to have population growth.

The regional institutions vary greatly in their ability to offset declines in resident enrollment with non-resident (out-of-state) students.⁴

- Five institutions enroll fewer than 20 percent of their students from out-of-state: Concord University (19 percent), Glenville State College (18 percent), Bluefield State College (15 percent), Fairmont State University (12 percent), and West Virginia State University (11 percent).
- In contrast, two institutions enroll more than 30 percent of their students from out-of-state: Shepherd University near the borders of Maryland and Virginia (38 percent) and West Liberty University near the borders of Ohio and Pennsylvania (35 percent). Again, these are the institutions in the growing parts of the state.
- Four institutions experienced sharp decreases in non-resident enrollment over the five-year period: Bluefield State College (20 percent), Concord University (18 percent), Glenville State College (18 percent), and West Virginia State University (14 percent). All of these institutions had relatively few non-resident students in the first place. This decline, however, suggests that seeking non-resident students as a solution to enrollment declines is not likely to be a successful strategy.
- Two institutions had small increases in non-resident enrollment: Shepherd University (10 percent) and Fairmont State University (12 percent).

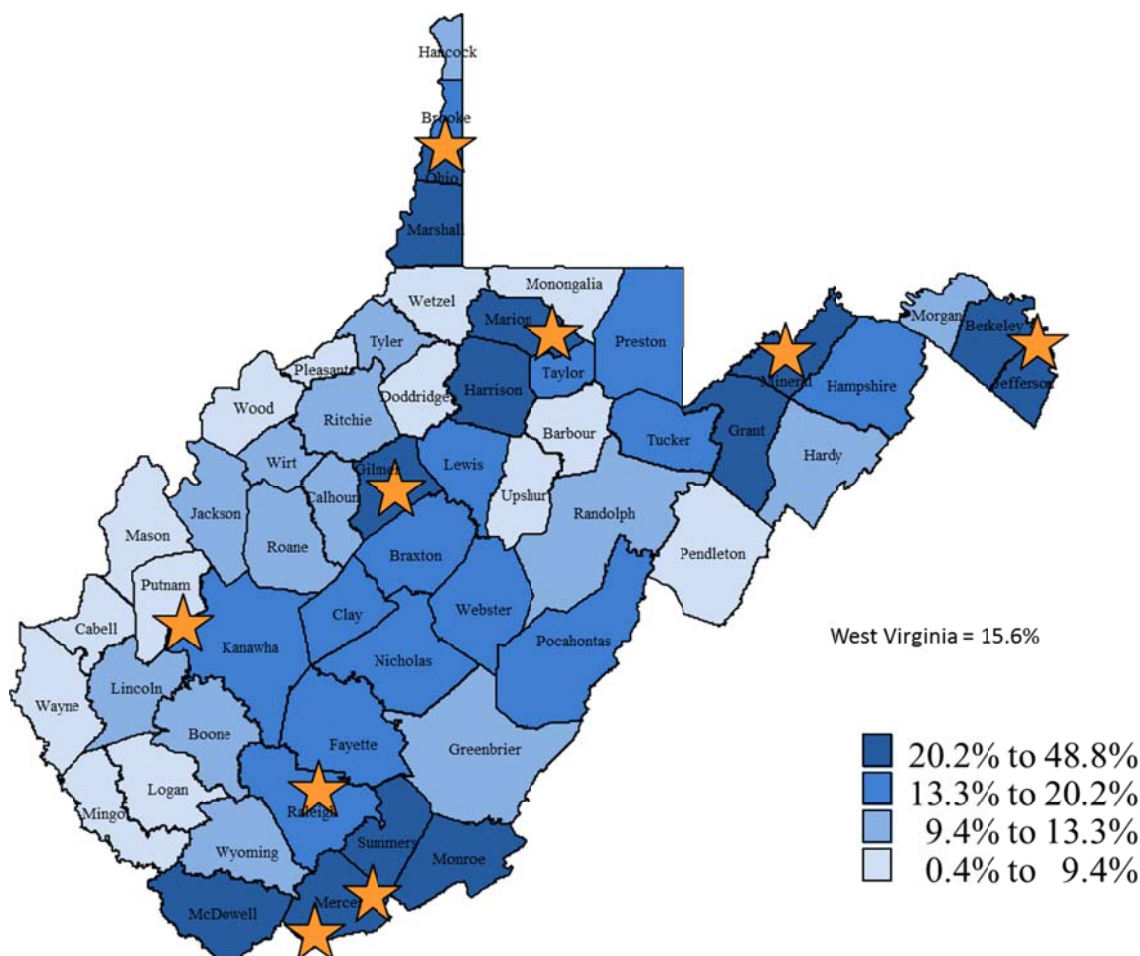
Significant disparities exist among counties in their socio-economic conditions; these conditions are typically highly correlated with preparation for, and participation, in postsecondary education. The location of a public institution in a county also has a major impact on the postsecondary participation in that county.

Figure 1. West Virginia Public Institutions – First-Time Freshmen Directly Out of High School as a Percent of Public High School Graduates, 2015



- The regional institutions draw heavily from the counties in their immediate areas.

Figure 2. West Virginia Public Four-Year Comprehensive Institutions-First-time Freshmen Directly Out of High School as a Percent of High School Graduates



Note: Figure 2 does not show two WVU campuses: Potomac State College of West Virginia University located in Keyser, West Virginia, and West Virginia Institute of Technology, which has since moved to Beckley.

- Both West Virginia University and Marshall University have higher admission requirements than other West Virginia public institutions. As a result, the average ACT and SAT scores for students admitted to these institutions are higher than those of students entering other institutions. This means that the regional institutions that enroll less well-prepared students have to work harder to ensure student success, a task made more difficult by the limited resources they have to devote to it. However, with West Virginia University admitting more than 35 percent of high school graduates in 22 counties, it seems improbable that all these students would have been the top-performing students in their counties. The more-selective institutions are dipping deeper into their applicant pools to the detriment of the regional institutions. The reality is that a combination of the eligibility requirements for Providing Real Opportunities of Maximizing In-State Student Excellence (PROMISE) scholarships, the prestige of West Virginia University and Marshall University, and greater depth in institutional-funded student financial aid give these two institutions a decided advantage in competition for students with other public institutions serving the same county. In the absence of

some external forces, this pattern will likely continue, causing ongoing strain for the most vulnerable regional institutions.

Degree production and future West Virginia workforce needs

According to Workforce West Virginia (2012), nearly two-thirds of the state's 34 jobs with the greatest demand will require some type of postsecondary training or degree. These findings correlate with other economic studies that call for West Virginia to increase the proportion of its adult population having postsecondary credentials. By 2020, 55 percent of all jobs in West Virginia will require a postsecondary certificate or above (Carnevale, Smith, and Strohl, 2013). Healthcare, business, and education-related positions are expected to experience the most growth.

- A shift in state employment trends also raises questions about the appropriate mix of two- and four-year capacity the state will need in the future. Many of the jobs of today and in the future will not require a bachelor's degree, but will require a certificate or associate's degree from a community or technical college instead. However, the West Virginia higher education system remains focused predominantly on bachelor's degree production.
- The changes in the early 2000s to establish the West Virginia Community and Technical College System appear to have had a positive impact in terms of increasing the number of certificates produced. The changes resulted in much smaller changes in the production of degrees at the associate's and bachelor's degree levels.

Table 1. Change in degrees, 2005 to 2014

Degree Level	2005	2014	2005-2014 Percent Change
Certificates	376	1,694	350.5
Associate's Degrees	2,579	3,552	37.7
Bachelor's Degrees	8,025	9,530	18.8
<i>Source: 2015 Report Card, p. 6</i>			

West Virginia degree production remains heavily weighted toward the bachelor's degree-level compared to Southern Regional Education Board (SREB) states—another measure of likely imbalance.

Table 2. Proportion of degrees granted in West Virginia, by level, compared to SREB states

	West Virginia				SREB States
	Degrees Produced		% of Total Degrees		% of Total Degrees
	2005	2014	2005	2015	2015
Cert/AD	2,973	5,246	21%	28%	42%
Bachelor's	8,025	9,530	56%	52%	41%
Advanced	3,226	3,634	23%	20%	17%
Total	14,224	18,410	100%	100%	100%
<i>Source: 2015 Report Card, p. 6</i>					

With the separation of the community colleges in the early 2000s, the regional institutions, with the exception of Bluefield State College and Glenville State College, became primarily bachelor's degree-granting institutions.

Table 3. Percent of degrees by level

	Associate's	Bachelor's	Master's
Glenville State College	28.6%	71.4%	-
Bluefield State College	33.9%	66.1%	-
West Virginia State University	-	97.5%	2.5%
Concord University	-	85.0%	15.0%
West Liberty University	5.7%	86.0%	8.2%
Fairmont State University	11.6%	77.5%	10.9%
Shepherd University	-	91.6%	8.4%
<i>Source: NCES IPEDS Surveys, 2014-15</i>			

The bachelor's degree focus of the regional institutions could be a source of risk. Many of the jobs of today and in the future will not require a bachelor's degree, but a certificate or associate's degree in a workforce related field. Nevertheless, the projected decline in the state's working age population will make the education attainment/skill level of the remaining population increasingly important. To remain competitive, the regional institutions will need to revise academic programs to ensure alignment with the needs of the state. As indicated below, the majority of the degrees granted by the regional institutions is in professional fields that are likely to have continued relevancy to the West Virginia economy. However, the relatively low production of degrees in STEM fields points to a potential disconnect between offerings and the future needs of the state.

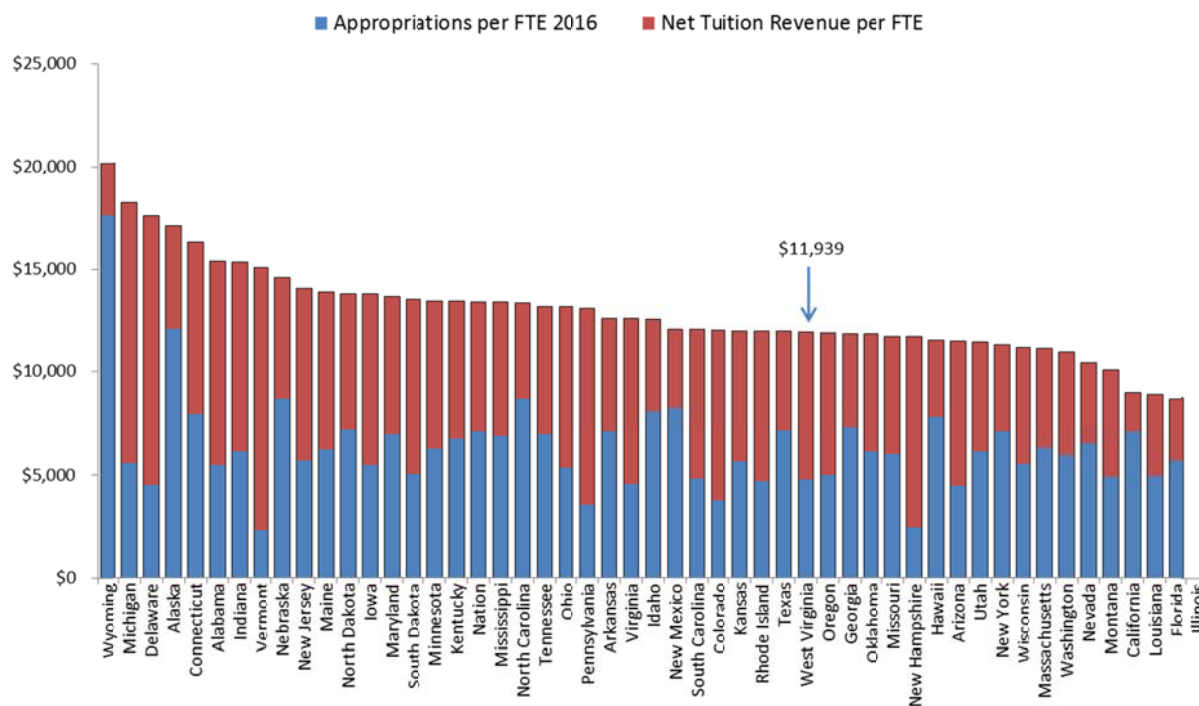
Table 4. Percent of degrees by field

	Academic	Natural Science	Social Science	Humanities	Health Science	Engineering	Business	Education	Computer
Glenville State College	33.6%	2.9%	12.4%	7.3%	0.0%	0.0%	16.8%	21.2%	0.0%
Bluefield State College	38.2%	0.0%	11.2%	0%	16.5%	18.8%	8.2%	8.8%	2.9%
West Virginia State University	37.2%	4.7%	10.8%	4.5%	4.1%	0.0%	8.3%	18.2%	0.5%
Concord University	42.6%	7%	11%	3.4%	3.8%	0.0%	18.4%	21.8%	0.6%
West Liberty University	26.8%	3.2%	4.5%	6.3%	175	0.0%	12.9%	20.9%	0.0%
Fairmont State University	23.7%	2.3%	10.9%	2.2%	9%	10.6%	15.1%	17.3%	2.0%
Shepherd University	36.4%	5.2%	10%	7.9%	8.9%	1.3%	13.9%	15.5%	2.8%
<i>Source: NCES IPEDS Surveys, 2014-15</i>									

Economic realities

West Virginia faces severe economic limitations resulting in significant cuts across all dimensions of state government, including higher education. State funding per FTE is lower in West Virginia than in most other states as is shown in Figure 3. Data that include all public institutions can be misleading since they mask differences in the mix of institutions within the state (e.g., West Virginia enrolls a relatively high proportion of students in high-cost research universities while states like Oregon, Arizona, Washington, California, and Florida enroll the majority of their students in lower-cost community colleges).

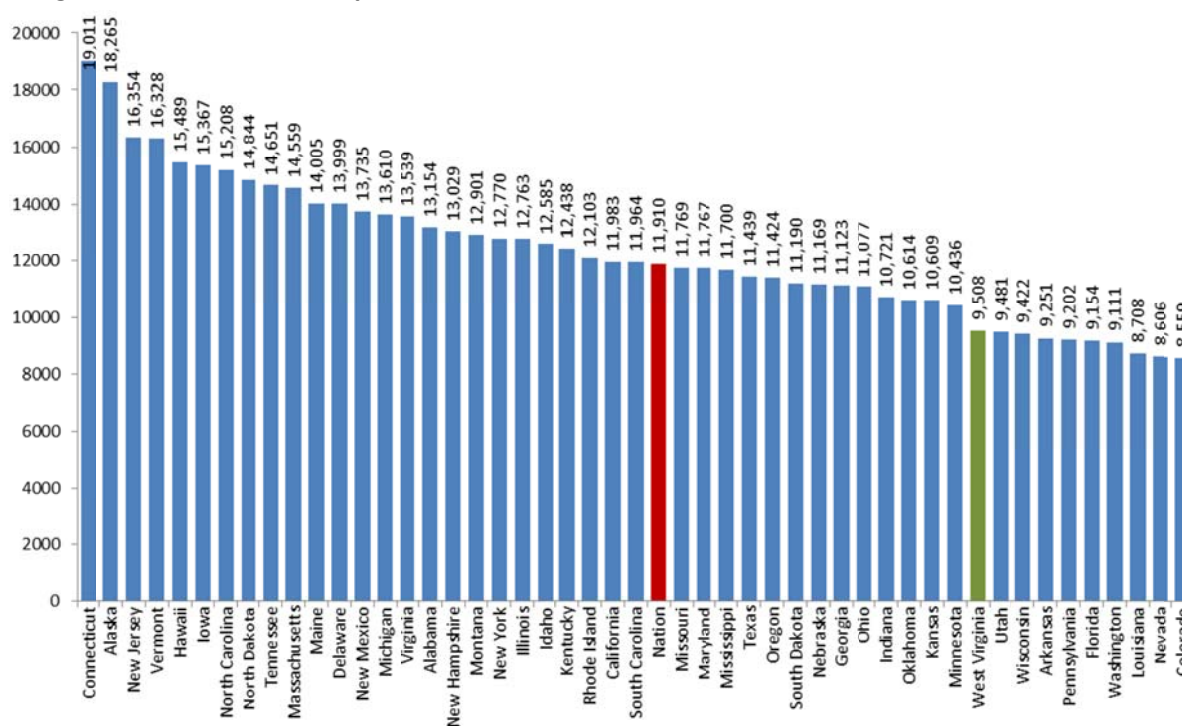
Figure 3. Appropriations and Net Tuition per FTE, FY 2016



Source: SHEEO SHEF FY 2016.

Note: The figure presented here does not include Illinois, which has one of the country's largest student enrollments (and therefore a great potential to influence the national numbers). Illinois' data for 2016 were affected by the lack of an adopted state budget and data reporting errors, and are currently being revised for inclusion in next years' report.

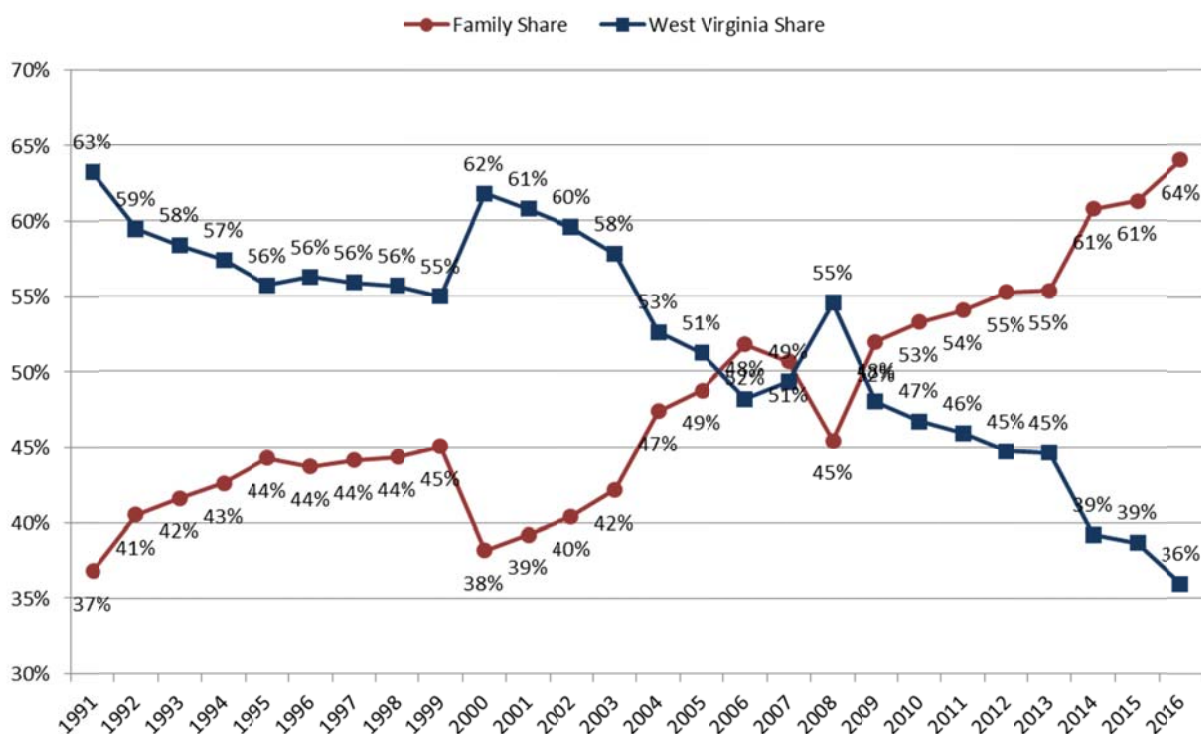
Figure 4 provides a much clearer picture of funding levels for the four-year institutions. This figure shows West Virginia's regional institutions are funded at levels even further below the national average. The fact that West Virginia is at the low end of per student funding suggests that there is not much fat to squeeze out of institutional budgets.

Figure 4. Revenues per FTE Students, Public Masters & Baccalaureate Institutions, 2015

Sources: NCES, IPEDS 2014-15 Provisional Release Finance Files; f1415_f1a, f1415_f2, and f1415_f3 Finance Files; NCES, IPEDS 2014-15 Instructional Activity File; efi2015 Provisional Release Data File; NCES, IPEDS 2014-15 Institutional Characteristics File; hd2015 Provisional Release Data File.

Note: Due to reporting challenges for ASU Branch Campuses, data for Arizona has been excluded.

State institutional funding for higher education (not including student financial aid) has declined to the point that the state and student shares have reversed (see Figure 5). During the period from 2000-01 to 2015-16, the share of public institution funding from the state dropped from 62 percent to 36 percent (not including the West Virginia School of Osteopathic Medicine). Tuition and fee revenue is now providing 64 percent of the overall funding.

Figure 5. Family Share of Public Higher Education Operating Revenues

- The regional institutions are responding to the demographic and economic conditions with strategies that, given the experience throughout the country, are unlikely to be successful for long-term sustainability:
 - Discounting tuition to the extent that tuition revenue at some institutions is as low as 20 percent of gross tuition revenues. Tuition discounting is putting institutions at significant financial risk.
 - Attempting to recruit out-of-state students (with decreasing success, as noted above) when every neighboring state is pursuing the same strategy to compensate for overall declining student population in their states.
 - Attempting to recruit international students when costs of international recruitment and the increasingly competitive environment make this strategy highly problematic. The national picture points to a decline in international students, even for the most-attractive universities.
 - Pursuing various, often costly, strategies to increase prestige, marketability, or visibility (e.g., attempting to move up competitive levels in sports).
 - Shifting the teaching load increasingly to part-time, adjunct faculty with inadequate consideration of the long-term impact on quality and on student retention.
 - Disinvesting in student services personnel, giving priority to preserving faculty capacity, negatively affects efforts to improve student retention and success.
- What they have not done is develop strategies for serving adults that represent a regional market that is badly underserved.

Institutional financial condition

The 2016 Consolidated Audit of the institutions within the jurisdiction of the West Virginia Higher Education Policy Commission (Commission) (all the regional institutions as well as WVU and Marshall but excluding the West Virginia School of Osteopathic Medicine) outlines the stark realities related to the public higher education system's financial conditions. The following are excerpts from the Audit Report:⁵

- Net operating results indicate that most of the institutions are not generating enough resources and they are depleting reserves;
- For the majority of institutions across the system, the performance of financial assets provides insufficient support for their respective core missions;
- The inclusion of OPEB and pension liabilities results in scores that indicate poor financial health for all the institutions except for Marshall University⁶; and
- The Composite Financial Indexes for most of the institutions demonstrate that resources are not sufficient and flexible enough to support the schools' missions. The financial strength for all institutions has deteriorated under the strain imposed by continuous state budget cuts. A composite value of 1.0 is the equivalent of weak financial health. A value of 3.0 signifies relatively strong financial health.

Table 5. Composite Financial Indexes for Regional Institutions

	BSC	CU	FSU	GSC	SU	WLU	WVSU
FY 2015	-0.7	0.51	1.2	-0.06	1.33	2.38	0.7
FY 2016	-1.91	0.04	-0.56	1.01	-0.04	0.31	-1.54
<i>Source: West Virginia Higher Education Policy Commission, Meeting of June 23, 2017, Fiscal Year 2016 Consolidated Audit Presentation</i>							
<i>Note: GASB accounting reporting standards require the reporting of postemployment expenditures, assets and liabilities (OPEM/Pension Liabilities). The CFI data above do not include these data. Including the liabilities would show that the financial health of the regional institutions is even worse than shown in the above table.</i>							

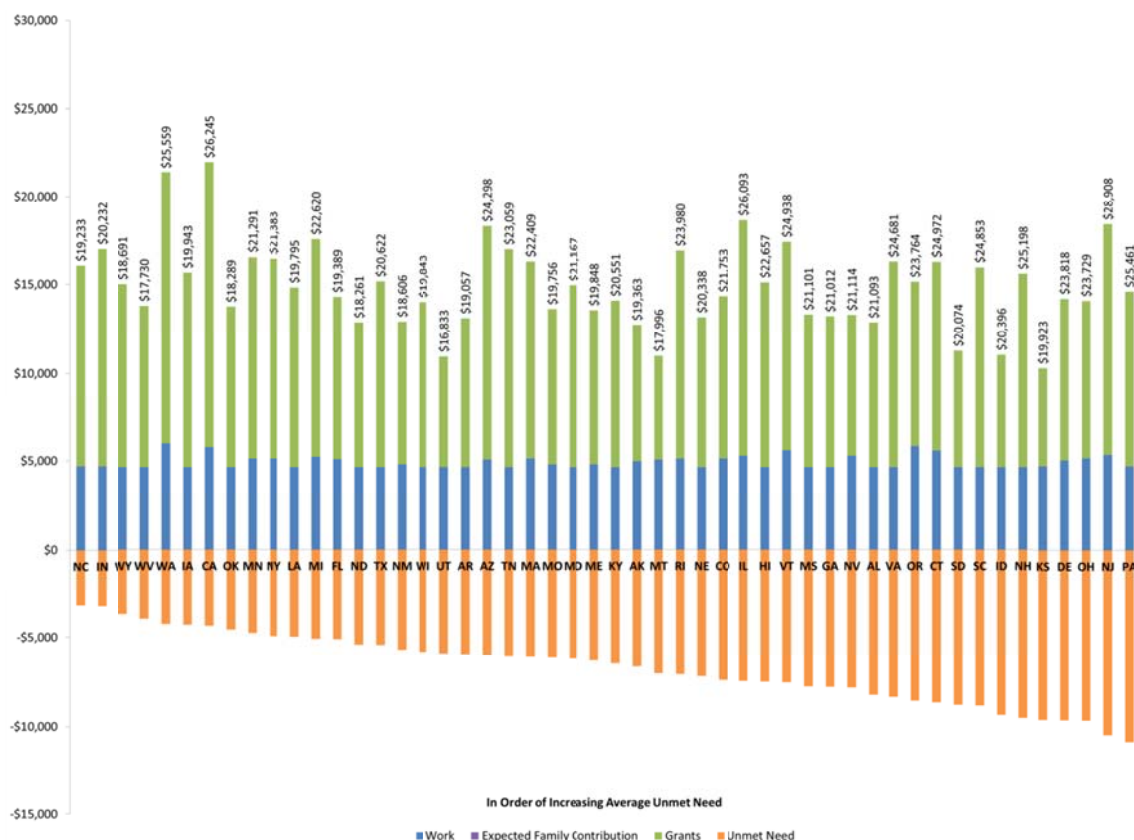
In West Virginia, capital expenditures, including new facilities and renovation of older ones, are financed through student fees. As indicated in the audit report;

For most institutions, a high level of debt is required to maintain adequate facilities because the state has not consistently supported capital funding. Tuition and fee rates for resident students are limited; consequently, some institutions are not in a position to incur additional debt. Without the ability to incur debt, aging facilities are not renewed or replaced. The excess dependency upon student fees for capital improvements reduces institutions' debt capacity for strategic mission advancement.⁷

The dependence on student fees, not only for capital improvements but also for institutional operations, provides a particular threat to institutions who serve low-income students who cannot afford increases in tuition. Figure 6 indicates that low-income West Virginia students have in excess of \$3,000 of unmet need, even after an expectation of student contribution from work, parental contribution and all grant aid. This is in spite of the fact that West Virginia has the lowest average net cost of attendance in any of the 50

states. This low-income group represents a substantial portion of the students served in the four-year institutions.

Figure 6. Public Four-year Institutions, \$0-\$30,000 Income Level, 2014-15



Source: NCES IPEDS Student Financial Aid and Net Price Survey, SFA1415; NCES IPEDS Institutional Characteristics, IC2014_2Y
 Notes: Vertical label indicates average cost of attendance (sum of gross cost of attendance / number of students in income level)
 Unmet need = average cost of attendance - work - expected family contribution - grants

Impact of Changes in Governance on Regional Institutions

Long-standing issues

A long-standing issue in West Virginia is the maintenance of mission differentiation and a degree of balance among institutional missions. West Virginia continues to face a particular challenge in maintaining a balance between the prestige, scale, statewide reach and political influence of West Virginia University and Marshall University on the one hand, and the needs of the regional institutions on the other. The need to ensure balance between the missions of the research universities and the regional comprehensive institutions has been behind many of the changes in statewide coordination and system/institutional governance over the past 50 years.⁸

History of changes⁹

In 1989, on the recommendations of a study by the Academy for Educational Development (AED), the West Virginia Legislature abolished the West Virginia Board of Regents that oversaw the entire public

higher education system, and established two state boards to replace it. The University System of West Virginia Board of Trustees governed West Virginia University, Marshall University, and the West Virginia School of Osteopathic Medicine. The State College System of West Virginia Board of Directors governed eight four-year institutions (six of which had community college divisions) and two freestanding community colleges (West Virginia Northern Community College and Southern West Virginia Community and Technical College). A central administrative staff served both state boards.

In 2000, the West Virginia Legislature again changed the governing structure. The legislation (Senate Bill 653):

- Abolished the University System of West Virginia Board of Trustees and the State College System of West Virginia Board of Directors.
- Established governing boards for each four-year institution.
- Established the West Virginia Higher Education Policy Commission with responsibilities of being a statewide coordinating board for the entire public higher education system. The Legislature also assigned to the Commission responsibility for the statewide administrative entity providing legal, human resources, procurement, and other services for the locally governed colleges and universities.
- Established the four-year institutions' community college divisions as independently accredited colleges, each with its own governing board. The legislative intent was that these colleges remain "administratively linked" to the original sponsoring institution as a way of achieving efficiency of operation but academically separate in order to allow focus on technical/vocational programs that were getting too little attention.
- Established a statewide coordinating body for the locally governed community and technical colleges.

Subsequent legislation enacted in the early 2000s increased the authority of the West Virginia Community and Technical College System and granted the system substantial independence from the Commission. The changes reduced the authority of the Commission to coordinate the entire system and restricted its role to essentially two functions: statewide coordination of the four-year institutions (including both West Virginia University and Marshall University) and the regional institutions, and overseeing the centralized administrative functions serving both the four-year and community college sectors.

The early 2000s governance changes resulted in a highly fragmented public higher education system: 20 public institutions (12 baccalaureate, 8 community and technical colleges) overseen by 22 governing boards and 20, often duplicative, administrative teams. The legislative intent in the enactment of SB 653 in 2000 was that the newly independently accredited community colleges remain administratively linked to their previous regional institution host. Nevertheless, the community and technical colleges proceeded to establish their own administrative structures by the mid- to late-2000s. For the regional institutions—and the higher education system as a whole—this resulted in loss of intended economies-of-scale between the two sectors. The net effect has also been to eliminate systematically the capacity to deal with issues in any collective way. Every institution is left to cope with problems on its own.

Impact of changes on authority and powers of the West Virginia Higher Education Policy Commission

Over the 17-year period since the enactment of SB 653, the legislature has reduced the role of the Commission from a powerful overall coordinating entity for the entire system to an entity with only limited coordinating authority primarily for the remaining seven regional institutions and a reduced capacity to provide shared services for the system.

Additional legislative changes enacted in 2017 (HB 2815) further reduced the powers of the Commission in critical areas such as:

- Power to approve presidential hiring, compensation and firing
- Program approval and termination
- Approval of all capital projects including public-private projects with implications for the higher education system as a whole
- Authority to require consolidation of administrative, financial and/or academic functions among or between institutions

The 2017 legislation also eliminated the ability of the Commission to fund its core operations through a student fee levied at each institution.

Implications of changes for regional institutions

These changes have had major implications for the regional institutions:

- West Virginia now has no state-level entity with authority and power to maintain a balance among missions and to counter actions of either West Virginia University or Marshall University that have the potential to seriously undermine the regional institutions' sustainability. The changes have left the regional institutions sector vulnerable to the power of larger institutions with the brand name and the resources to compete for students and state resources.
- The establishment of local boards of governors worked well for institutions with sufficient scale and stability to thrive on their own, at least in the short- to medium-term. However, local governance is not working well for smaller institutions in adverse demographic and economic environments (Medium to High Risk).
- High level of fragmentation in the regional institution sector has left a void in state-level advocacy for their mission of serving:
 - Students not well-served by the research universities (first-generation, from rural schools, adults with some postsecondary education and no degree)
 - Regional workforce and economic development needs
- The establishment of independently accredited community and technical colleges appears to have worked well in some cases but not in others. Generalizations about the impact of this change will inevitably ignore important differences across West Virginia. The establishment and maintenance of effective and complementary working relationships between entities that were once part of the same institution and occupy the same location has not always been smooth. In other cases, the changes

appear to have led to the development of new unsustainable community and technical colleges co-existing in the same regions with their former sponsoring regional universities, leaving both increasingly at the risk of failure. In still other instances, the separation led to the establishment of community colleges effectively serving previously unserved workforce needs.

- The Commission now lacks the authority and capacity to play a pro-active role in assisting the most economically fragile institutions, either individually or collectively, to move to a more sustainable status.

Observations from Interviews

Sustainability

The viability/sustainability of institutions and opportunities for students in the regions that they serve differs greatly depending on several variables: mission, geographic location, population served, market position/competition, scale/size, leadership, management, array of academic programs, etc. Understanding these differences is important to defining a path forward.

In the longer-term, as suggested by the Consolidated Financial Index (CFI), all the regional institutions are at risk of failure. However, that risk varies significantly. Institutions are at essentially two levels of risk:

- **Low-to Medium-Risk:** These institutions are sustainable in the near term; however, their future is still at risk given the competitive market and potential for uncertain circumstances in the future. The following institutions are in this category: Fairmont State University, Shepherd University, and West Liberty University. These institutions have advantages that some of the other institutions do not have:
 - Location in a West Virginia region with some population growth and a stronger economy
 - Capacity to generate revenue from out-of-state students
 - Institutional leadership making changes needed for sustainability
 - Sufficient stability to allow adaptation at rates that will not be destructive

However, the institutions face uncertainties in the future:

- Institutional leadership changes
 - Small scale that makes cost-effective delivery a challenge
 - Competitive market for tuition-paying students essential to sustain revenue
- **Medium-Risk to High-Risk:** These institutions are sustainable in the short-term, but their futures are uncertain. Institutions in this category include Bluefield State College, Concord University, Glenville State College, and West Virginia State University. Uncertainties include:
 - Inability to generate sufficient revenue from tuition to cover costs and offset declines in state support.
 - Significant challenges in making changes needed to align faculty capacity with mission and enrollment.

- History of uneven institutional leadership. Even in instances where capable institutional leaders have made exceptional efforts, the barriers of scale and diminishing financial capacity make sustainability problematic.
- Size that makes it difficult to develop solutions to problems as a stand-alone institution—collaboration is necessary, but difficult in the existing governance environment.

Institutional Leadership

NCHEMS' interviews with institutional teams underscored the important differences in the challenges facing each institution. For all institutions, institutional leadership at the levels of the board of governors, the president, and the provost is essential to:

- Maintain or increase revenue from enrollment consistent with mission. The institutions' missions, programs, and services must be successful in attracting students, especially students from new populations (e.g., adults with some postsecondary education and no degree).
- Align human resources, especially faculty, with mission and enrollment. Eighty percent of costs are in human resources and the largest percent is in faculty.
- Make strategic financial decisions (both operating and capital expenditures, tuition and fees, etc.) that are consistent with institutional mission and which will improve the institution's financial health. For example, most of the institutions face high levels of debt financed by student fees that undermines their ability to address long-standing deferred maintenance issues. As noted below, Bluefield State is embarking on major capital investments that will require funding from future students' fees.

NCHEMS' observation is that, aside from advantages of location, the effectiveness of institutional leadership is the most important explanation of the differences in the long-term viability of the regional institutions. Much depends on the decisions by the board of governors regarding presidential appointments and other critical matters (such as a willingness to seek collaborative solutions). Some institutions have done reasonably well despite adverse conditions. Others are struggling today due to external conditions and decisions made over the past decade and before.

The decentralization of governance with the establishment of boards of governors for each institution had several positive effects. Under its own governing board, each institution:

- Has greater flexibility, free of some of the previous state oversight, to pursue strategies appropriate to each institution's unique mission
- Gained the benefits of having a group of business and civic leaders deeply engaged in, and committed to, the future of the institution

For larger institutions such as West Virginia University and Marshall University, the decentralization of governance within the framework of statewide coordination and accountability, was feasible. For the regional institutions that had the advantage of location and market position, local governance appears to have worked reasonably well. For others, however, decentralized governance has not proven to be up to the task of leading the institutions to a sustainable future. The reality is that because of the governance changes enacted since 2000, most especially those enacted in 2017 (House Bill 2815), the capacity of the Commission to play a pro-active role in strengthening local governance at some institutions where it is

sustainable or intervening at other institutions to avert serious issues was eliminated. The Commission has authority to intervene in extreme cases of governance failure. However, by the time that conditions deteriorate to the point where the Commission is empowered to step in, it may be too late to save the institution.

Economies-of-scale through shared services

Achieving economies-of-scale through shared services is an important way the regional institutions can reduce costs. NCHEMS' observation from interviews that all the regional institutions recognize the critical role that the Commission plays in providing shared services in areas such as:

- General counsel/legal services
- Financial services
- Data/information services
- Student financial aid administration
- Procurement

The changes enacted in House Bill 2542 that deregulated state human resource policies appear to be having a positive impact on the ability of the regional institutions to make needed institutional-level decisions in the face of financial distress. The changes may also have a positive impact on the Commission in that the Commission will not be drawn into the detail of human resource rulemaking that in the past detracted from its more important policy leadership role.

The institutional teams expressed appreciation for the quality and sensitivity of the Commission's leadership in academic affairs in review and approval of academic programs and addressing inter-institutional issues such as articulation and transfer. The provosts of the campuses have a good working relationship among themselves and with the Commission in sharing information and resolving common problems. The institutions cited other opportunities for increased collaboration, including:

- Shared library services
- Establish an online course clearinghouse to manage more efficiently the development and use of a common online course delivery platform like WV Rocks. Since West Virginia institutions seem to be at an early stage in developing and offering online courses, this would be a feasible strategy.

Another area where institutional teams urged a stronger role is in advocating for the small institutions with the State Department of Administration (DAS) for relief from the costs of implementing the department's new software program for payroll and other functions administered by the state government (wvOASIS). In 2016, the DAS began a three-year implementation of wvOASIS, a software program designed to merge more than 100 different government systems. The system is intended to increase efficiency and create greater transparency in state government. For the regional institutions, the new system is anything but efficient or transparent. Designed for large state agencies, wvOASIS is far too complex for the scale of the smaller regional institutions. The cost of the staff time to implement the new system is draining already limited resources. West Virginia University has apparently obtained software that interfaces with wvOASIS and greatly simplifies the transmission of data from Morgantown to Charleston for financial transactions. The regional institutions have considered contracting with West Virginia University to have them transmit data to wvOASIS for them. Again, the problem is that the West

Virginia system is appropriate for a large university. In addition, there are concerns that WVU and its staff would remain focused on serving its own needs and would not give adequate attention to the smaller institutions' priorities. The question remains then: Could the Commission provide these services? Alternatively, could the Commission contract with West Virginia University on behalf of the institutions? In any event, the Commission needs the portfolio and the authority to deal with this and similar issues.

Collaboration in academic program delivery

As noted earlier, the focus of this NCHEMS study is on how to sustain higher education opportunities to each region of West Virginia. With 80 percent of institutional costs in human resources (and the largest in faculty), savings in this area will be necessary for institutions to survive. In most of the regional institutions, academic leaders are already making needed changes—changes that inevitably occur on a case-by-case basis as faculty members retire. However, institution-by-institution change will likely be insufficient to scale back the academic capacity of institutions to a sustainable level. In time, opportunistic (as opposed to strategic) retrenchment can result in an institution without the academic capacity to fulfill its mission and to continue to provide opportunities to the region's population and communities. An important way to avoid this end is to replace, supplement, or enhance the institution's academic programs through collaboration with other institutions. The goal of collaboration should be to continue high quality academic programs for the institution's students but to do so without the cost of faculty capacity. Academic collaboration can take many forms from small- to large-scale. For example, faculty from one campus could teach at another campus by physically commuting to that campus or faculty from one institution could deliver courses or academic programs to students at another institution using the capacity of technology. One can find multiple examples and models for collaborative delivery of academic programs, but the success of these arrangements requires academic leadership and a supportive policy environment.

NCHEMS' observation from interviews is that most institutional leaders recognize that academic collaboration is a critical strategy toward sustainability. Nevertheless, the competition and lack of trust among institutions and lack of financial incentives are major barriers. The intense competition for revenue-generating students and the disincentives in the state funding model provide barriers to collaboration. As a result, each institution is working through its own survival strategy in isolation. Theoretically, the regional institutions could share academic capacity among themselves or with West Virginia University or Marshall University. A major obstacle to collaboration with West Virginia University or Marshall University is a fear that the larger institutions will collaborate only out of their self-interest to stifle competition or ultimately take over the smaller institutions. Effective use of resource allocation strategies will be required to address the inherent problems—the model has to promote mutual benefits to collaboration.

NCHEMS' interviews indicate that there are short-term practical ways in which the Commission could play more of a role in facilitating collaboration. The Commission could:

- Establish an online course clearinghouse and more efficiently manage the development and use of a common online course delivery platform like WV Rocks (the fact that West Virginia institutions are at an early stage in developing and offering online courses makes a collaborative approach more feasible).
- Facilitate efforts to create a statewide library network.

- Include within the new funding policy incentives for collaborative delivery of academic programs.

However, the Commission lacks the mandate, staff capacity, and funding to lead, if not require, inter-institutional collaboration on a scale needed to address the current fiscal crisis. In the absence of substantial assistance from the Commission, institutional leaders are clinging to the hope that they can survive on their own.

Immediate issue: the future of those regional institutions in greatest fiscal distress

NCHEMS' observation is that for the institutions at highest risk, Bluefield State College and Concord University, the challenges are so serious that only a major restructuring will preserve postsecondary education opportunity for students in Southern West Virginia. Implementing this restructuring will require external pressure, leadership, and on-going facilitation to mandate and implement a consolidation of academic, student and administrative capacity of the two institutions while maintaining, to the extent feasible, the names and traditions of each campus. The two institutions have already explored in some detail how they could:

- Share academic capacity that would make it possible for each campus to retain or enrich academic offerings to their students that will not be possible if each institution retrenches in isolation of the other
- Consolidate administrative services
- Utilize excess residence hall capacity at Concord University to provide residences for Bluefield State College students

Nevertheless, forces at both institutions continue to resist needed changes. Bluefield State College continues to pursue construction of a residence hall, with partial support from a local foundation, with hopes that this will enable the institution to recruit and retain more students—this while Concord University has empty dormitory space. NCHEMS' assessment is that, without immediate action to mandate that these two institutions pursue an integrated approach to their future, each institution will continue on its downward trajectory with major negative consequences for their students, their communities, and the future of Southern West Virginia. Two other realities make the situation in Southern West Virginia even more complex: the uncertain future of New River Community and Technical College and the impact of the recent relocation of West Virginia University Institute of Technology to Beckley. Glenville State College and West Virginia State University are also in tenuous positions, positions that will become more dire, unless institutional leaders can act to reverse current trends. In time, solutions being considered to address the problems of Concord University and Bluefield State College may need to expand to encompass these other institutions; however, the futures of Bluefield State College and Concord University are the most pressing issues.

Criteria for solution

- Sustainability requires action at multiple levels in order to foster sharing both “back” office and academic capacity statewide
 - Each institution
 - Among institutions serving the same region or population

- West Virginia Higher Education Policy Commission
- State government (Department of Administrative Services)
- Reform of finance policy is critical to:
 - Align resource allocation with institutional mission, scale and state priorities
 - Address inequities in allocation of state appropriations
 - Provide incentives for collaboration
- Statewide leadership and coordination is essential to:
 - Maintain differentiation of mission among the state’s public institutions (e.g., research universities, regional access-oriented institutions, and community and technical colleges)
 - Ensure geographic balance to ensure cost-effective delivery of higher education to all regions of the state
 - Support leadership at the institutional level for needed changes
 - Develop essential shared services
 - Lead in increasing academic collaboration
 - Advocate for changes in state policies (including DAS) that support sustainability

Recommendations

- Consolidate governance of the two most at-risk institutions
 - Consolidate both institutions under one governing board, both Concord University and Bluefield State College, as a single corporation
 - Eliminate separate governing boards
 - Retain campus names (e.g., Concord University campus; Bluefield State College campus)
 - Leave open:
 - That Concord University/Bluefield State College could become a single accredited institution
 - The potential of including New River Community and Technical College within the new structure while retaining its unique mission as a community college
- Policy leadership for system
 - Reinstate critical powers:
 - Power to approve presidential hiring, compensation and firing, at least at the most financially threatened institutions
 - Program approval and termination
 - Approval of all capital projects, including public-private ones with implications for the higher education system as a whole
 - Authority to consolidate administrative, financial, and/or academic functions among or between institutions.
 - Assign responsibility to the Commission to develop and recommend funding policy to the Governor and Legislature

- Implement comparatively low-cost strategies to:
 - Establish an online course clearinghouse and more efficiently manage the development and use of a common online course delivery platform like WV Rocks (given that West Virginia institutions seem to be at an early stage in developing and offering online courses)
 - Facilitate efforts to create a statewide library network
 - Include within the new funding policy incentives for collaborative delivery of academic programs
- Support the strengthening of local governance of regional institutions:
 - Consider forming a statewide association composed of members of institutional boards of governors
 - Undertake training for boards focused on strategies (including inter-institutional collaboration) as a path to long-term sustainability
- Distinguish the Commission policy leadership functions from its functions as provider of shared services to institutions:
 - Organize, under the Commission, a service organization focused primarily on the regional institutions
 - Finance, through combination of base appropriation plus institutional fees, those services which the institutions determine to be of benefit for economies of scale
 - Utilize state appropriations to supplement revenue from institutional fees
 - Include use of software that interfaces with wvOASIS to be used by all participating institutions; consider financing this based on dollars per employee

Longer-term

- Re-establish the Commission as coordinating body for all public higher education in West Virginia, including:
 - Functions
 - Establishing statewide goals
 - Maintaining a statewide higher education database and drawing on that database to conduct analyses that inform policymaking and monitor progress toward achievement of state goals.
 - Operating the shared service organization for both West Virginia Council for Community and Technical Colleges and West Virginia Higher Education Policy Commission
 - Administering state student financial aid programs
 - Licensing and regulating non-public postsecondary institution operating in West Virginia
- Establish a state regional college and university governing board
 - Headed by a chancellor
 - Include initially:
 - Bluefield State College
 - Concord University
 - Glenville State College

- West Virginia State University
- Eliminate separate governing boards for these institutions
- Establish powers of the new board to be similar to those of the Board of Governors of the individual institutions with broad powers to restructure the institutions and system as needed to ensure long-term sustainability
- Initially retain local boards of governors for Fairmont State University, Shepherd University and West Liberty University but with additional powers regarding governance of institutions explicitly delegated to the Commission.
 - Grant the Commission authority to withdraw delegated powers
 - Make presidential appointments, evaluation, and compensation subject to review and approval of the Commission
 - Grant the Commission authority to mandate that these institutions participate in collaborative initiatives and shared services

Endnotes

¹ WVU Business and Economic Research (2014) Population Trends in WV through 2030.

² Western Inter-State Commission for Higher Education (WICHE)(2016)

³ Higher Education Policy Commission https://www.wvhepc.org/resources/Dashboard/Yearly/FTE/Public/2014-2015/annualized_fte.html

⁴ The regional institutions offer a variety of programs to attract out-of-state students including reduced tuition for students from border counties and in targeted urban areas. See for example, Concord University's out-of-state tuition reduction policy: <http://catalog.concord.edu/content.php?catoid=8&navoid=423> and Bluefield State's "metro rate." The Bluefield metro rate originally targeted border counties but the college has since extended the metro rate to non-contiguous countries from which it seeks to attract students.

⁵ West Virginia Higher Education Policy Commission (WVHEPC), Meeting of June 23, 2017. Fiscal Year 2016 Consolidated Audit Presentation, pp. 157-173

⁶ WVHEPC Fiscal Year 2016 Consolidated Audit Presentation, p. 169

⁷ WVHEPC Fiscal Year 2016 Consolidated Audit Presentation, p. 168

⁸ This paper makes a careful distinction between *governing* boards and *coordinating* boards. Governing boards have authority commonly assigned to boards of trustees of individual institutions including establishing educational policy, carrying out fiduciary responsibilities, appointing and evaluating institutional presidents, granting degrees, granting faculty tenure, etc. Systems or multi-campus governing boards have powers to govern two or more institutions. Coordinating boards, in contrast, perform functions such as statewide strategic/master planning; developing and recommending finance policies and operating and capital budgets to the governor and state legislature; developing the formulas for allocating state appropriations among institutions, approving institutional missions, new academic programs, and new off-campus sites; and administering state student aid programs and other state-level initiatives. Coordinating boards do not have authority to govern institutions. These boards oversee the system as a whole, while the responsibility for governance is assigned to institution-level boards of trustees or regents. McGuinness, Aims C., Jr. (2015). *State Policy Leadership for the Future: State Coordination and Governance*.

⁹ In 1969, West Virginia consolidated all public higher education including WVU, Marshall, the School of Osteopathic Medicine, and the regional colleges under a single system governing board, the Board of Regents, headed by a chancellor. From the beginning of this new board, tensions arose with the larger institutions arguing that the new Board of Regents was insensitive to their scale and unique missions while the smaller institutions argued that a culture dominated by WVU and Marshall gave insufficient attention to their missions.

Appendix



Jim Justice
Governor of West Virginia

May 15, 2017

Dr. Bruce L. Berry, Chairman
Dr. Paul L. Hill, Chancellor
WV Higher Education Policy Commission
1018 Kanawha Boulevard East
Charleston, West Virginia 25301

Chairman Berry and Chancellor Hill:

As you are aware, my administration took specific steps to provide flexibilities to our larger higher education institutions during the 2017 legislative session. Specifically, greater autonomy was granted to the Boards of Governors of West Virginia University, Marshall University and the West Virginia School of Osteopathic Medicine for policy and administration of personnel, capital projects, tuition rates and coordination with the state master plan for higher education.

In April, I approved these changes, which were authorized by two separate pieces of legislation, with the understanding that state appropriations are increasingly limited and that these particular institutions have the capacity to manage their financial, physical and legal affairs due to their size and volume of activities.

In light of these changes, as well as the current decline in appropriations, questions remain about the sustainability and function of the current state higher education system. We must ask whether the recently broadened flexibility will result in three stronger institutions, and given our revenue constraints, are the remaining seven baccalaureate granting schools sustainable in the current governance model over the long run? Beyond state financial resources, we also must consider accessibility of higher education, productivity of the institutions, improvement of academic quality and local economic impact as West Virginia continues to support its long-held traditions of low-cost postsecondary education for its citizens.

Therefore, I'm directing the Higher Education Policy Commission to conduct a formal assessment of these questions and to initiate a study of how the system will be sustained and strengthened in the future. Because you are professional educators, academicians and system managers, I ask that you design a study that addresses these issues and other parameters you deem appropriate to higher education administration. I ask that you complete the work over the next year and provide a preliminary report on your progress to both LOCEA and me by December 31, 2017.

Sincerely,

A blue ink signature of Jim Justice, written in a cursive style.

Jim Justice
Governor

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of Fiscal Year 2019 Division of Science and Research Spending Plans

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the Fiscal Year 2019 spending plans as recommended by the West Virginia Science and Research Council.

STAFF MEMBER: Jan Taylor

BACKGROUND:

Recommendations for programmatic allocations of accrued or awarded funds within the state Research Challenge Fund, Research Trust Fund and the National Science Foundation infrastructure programs are made annually by the West Virginia Science and Research Council to the Commission. As authorized by West Virginia Code §18B-1B-10, the Council is charged with oversight of the Research Challenge Fund, the Research Trust Fund and the National Science Foundation's EPSCoR program in West Virginia, including annual spending plans proposed by staff. Based on current fund receipts, awards and projections, the Fiscal Year (FY) 2019 spending plans below, developed and to be implemented by the Division of Science and Research, were approved by unanimous vote of the Council on June 28, 2018.

Research Trust Fund

All appropriations to the Research Trust Fund have currently been awarded to institutions.

Research Challenge Fund

The Research Challenge Fund (RCF) provides the foundation for many of the competitive grant programs administered by the Division. The fund's establishment in 2004 by the West Virginia Legislature provides support to science and technology research and education. All STEM disciplines and all institutions are eligible to participate in various competitions for funding. The RCF is funded by lottery proceeds and funds are appropriated annually by the Legislature. The current spending plan reflects the reductions that were taken from the RCF.

FY 2019 Spending Plan
Research Challenge Fund

5/20/2018

Cash Balance	3,367,316.00
Estimated Income	83,306.00
Estimated Expenses	30,294.00
Encumbered Grants	949,436.00
Estimated Carryforward	2,470,893.00
Budget FY '19	1,731,820.00
Estimated Total Funds FY '19	\$ 4,202,713.00

New Awards and Grant Renewals FY '19

SURE -year 3 renewal (6 awards)	306,336.00
RCG -year 2 renewals (3 awards)	886,164.00
Tech Assistance -New	150,000.00
DOE Energy Renewal	0.00
Instrumentation Grants –New*	0.00
Innovation Grants -New (2 awards)	40,000.00
Mini Grants -New	0.00
Opportunity Grants -New	50,000.00
RII Track 1 cost share	0.00
STEM -year 2 renewals (2 awards)	600,000.00
Total Awards	\$ 2,032,500.00

Administration (including cost share to NSF RII)**

Payroll & Fringe	238,000.00
Supplies	300.00
Printing	200.00
Rent	0.00
Phone	0.00
Contractual	2,000.00
Travel	3,000.00
Association Dues	0.00
Advertising/Promotional	2,500.00
Maintenance Contracts	0.00
Hospitality	1,000.00
Misc.	0.00
Postage	6,000.00
Misc. Equipment purchases	0.00
Drinking water rental and supplies	0.00
Training & Development	0.00
Total Administration	253,000.00

Estimated Carryforward FY '19	\$ 1,917,213.00
-------------------------------	------------------------

*Instrumentation Grants to be funded via HEPC

**Additional administrative fees to be paid with overhead funds collected from NSF RII grant.

National Science Foundation Experimental Program to Stimulate Competitive Research (EPSCoR)

EPSCoR is a federal grant program that builds research capacity in states to spur competitiveness, scientific discovery and economic development. Below are spending plans for the current Research Infrastructure Improvement (RII) awards from NSF EPSCoR under the direction of the Division.

RII Track 1 Award

Under the leadership of the Division, West Virginia University, Marshall University and West Virginia State University developed and submitted a five-year, \$20 million Research Infrastructure Improvement (RII) proposal to the National Science Foundation's EPSCoR Program in 2014. The grant will fund faculty hires, start-up packages, equipment and students as well as research time for existing faculty. The project began on August 1, 2015 and will end July 31, 2020. A 20 percent state match is required.

FY 2019 Spending Plan (as proposed to NSF)

NSF RII Track 1 Year 4

WVU sub award	1,931,055.00
MU sub award	1,117,647.00
WVSU sub award	532,588.00
PUI sub awards	31,785.00
Total Sub Awards	<u>\$3,613,075.00</u>

Management

Payroll & Fringe	214,375.00
Travel	9,000.00
Supplies	0.00
Total Management	\$223,375.00

Outreach/Communications

Publications	10,000.00
Other-video, speaker series	29,528.00
Total Outreach/Communications	\$39,528.00

Evaluation

Contractual-external evaluator	65,000.00
Total Evaluation	\$65,000.00

Indirect Costs

Total Indirect	\$59,022.00
-----------------------	--------------------

Total Administration	<u>\$4,000,000.00</u>
-----------------------------	------------------------------

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of Fiscal Year 2019 WVNET Budget

INSTITUTION: West Virginia Network for Educational Telecomputing

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the Fiscal Year 2019 West Virginia Network for Educational Telecomputing budget.

STAFF MEMBER: Matt Turner and Donna Meadowcroft

BACKGROUND:

The West Virginia Network for Educational Telecomputing (WVNET or The West Virginia Network) services include Internet and networking services for K-12 schools and libraries, as well as the Commission and West Virginia Community and Technical College System. WVNET is the first statewide Research and Education Network (REN) in the nation, begun in 1975, and continues to be a model for other states.

WVNET provides powerful cloud-based data services, with 40 Gbps bandwidth at low prices for these public agencies. WVNET also provides the revenue-generating West Virginia Remote Online Collaborative Knowledge System (WVROCKS) portal available to all colleges and universities, as a platform for online programs, directly supplementing institutional curriculum options.

Without WVNET, each institution would pay higher consulting fees for software and support or would require additional information technology staff. With a staff of fewer than 55 people, WVNET provides statewide Internet, database, software and technical support services with exceptional customer service, targeted specifically at education entities, often with unique or customized needs.

State Appropriations

WVNET received a Fiscal Year (FY) 2019 general revenue appropriation of \$1,681,744. The state appropriation is used entirely for personnel and covers one-third of WVNET's personnel budget for approximately 55 people.

FY 2019 state appropriated funding was increased by 6.51 percent, a \$102,803 increase from the FY 2018 base level. The increase was provided to support the statewide pay increases. It should be noted that the appropriation dollars now include the Higher Education Resource Allocation, which had been a separate line item of \$50,000.

The remainder of WVNET's budget comprises fee-based services to colleges and universities, schools, libraries, municipalities and some state agencies.

Combined Budget (Charts 1-3)

The WVNET budget consists of two main categories of revenues and expenditures: The operating budget and a pass-through budget, a dollar-for-dollar pass-through service provided to HEPC schools and community and technical colleges. The FY 2019 proposed combined budget for these two categories is \$13,277,957.

This is a decrease of 3.38 percent, \$464,635, from the FY 2018 budget proposal; and it is an increase of 10.73 percent, \$1,286,138, from FY 2018 actuals with estimated accruals.

Operating Budget (Charts 4-6)

Revenues: WVNET operating revenues are derived from the state appropriation, which now includes the allocated portion of Higher Education Resource Allocation, contracts, services, reserve and interest income.

FY 2019 Revenues: \$8,657,094

This is an increase of 0.14 percent in revenue, \$11,889, from the FY 2018 budget proposal; and it is an increase of revenue of 12.61 percent, \$969,205, from FY 2018 actuals with estimated accruals.

WVNET has increased its co-location services. WVNET Blackboard online learning software revenue increased as all institutions have chosen premium level support options. WVNET increased its Banner Hosting costs by \$10,000 for each customer and DegreeWorks Hosting by \$5,000 for each customer. WVNET made the same increase in FY 2018. Such was a result of absorbing increases in the cost of providing these services in prior years, helping to offset state-mandated budget cuts to our hosted institutions. It should be noted that WVNET did not charge its hosted institutions for Degree Works Transfer Equivalency License Renewals in FY 2018 as the separation of services had not been fully implemented. It should also be noted that WVNET enhanced its database security via advanced security option software in prior years but had not made increases to hosting charges.

WVNET continues generating revenue for the agency and for the colleges through WVROCKS online classes, which enable West Virginia students to finish degrees remotely. Additional revenue streams include Multi-Conference Units, Virtual Machines, Network Operating Center (NOC) Services, Institutional Research and Report Development (IRRD) Services, Chief Information Officer (CIO) Services, Distance Learning (PEAK), Argos Hosting, Email Virus and Spam Filtering, Support Services, DegreeWorks Transfer Equivalency Hosting, Web Hosting, Oz Problem Management

Tracking, and Blackboard Analytics Hosting.

WVNET provides hosting and support for the P-20 Statewide Longitudinal Education Data System (SLED). The P-20 database is the only system that combines data from K-12, Higher Education and Workforce West Virginia to present a comprehensive view of the interaction of these education and workforce operations. The data storage and staff resources this project requires are costs that have been absorbed by WVNET and HEPC; however, this will require a funding stream in the future.

WVNET provides a low-cost Internet service rate of \$4.89 Mbps in FY 2019. This is a competitive rate with other Internet service providers, but it is provided with a higher service level. WVNET has dropped its per-Mbps rate 90 percent in the past six years to remain competitive.

Staffing

WVNET has reduced staffing levels in recent years due to state budget cuts and has a number of unfilled vacancies, including positions in telecommunications, accounts payable, and systems. While the agency has increased workload and responsibility with existing staff, some of these vacancies must be filled to continue to provide the required support for customers and to maintain essential services. WVNET employs approximately 60 adjunct professors for WVROCKS online courses.

Maintenance/Building Costs

Last year, WVNET improved and increased the drainage around the Automatic Transfer Switch (ATS) to provide additional safety for both employees and data center. Additional outlets were run from the Power Distribution Unit (PDU) to facilitate expansion of our co-location services. This year's budget includes funds for long-deferred building maintenance, however; it may additionally require a one-time special appropriation to address Americans with Disabilities Act (ADA) concerns of improved access.

Pass-Through Budget (Charts 7-8)

The pass-through budget enables the consortium of institutions to obtain lower overall costs. WVNET is the central billing site for vendors and manages allocations and charges back to the appropriate institutions. WVNET historically has helped institutions with cash flow problems by making payment in advance without fee to ensure their operations are not affected.

FY 2019 Pass-Through Budget: \$4,620,863

This is a decrease of 9.35 percent, \$476,524, from the FY 2018 proposed budget; and it is an increase of 7.36 percent, \$316,933, from FY 2018 actuals with estimated accruals. This budget depends largely on purchases made by the consortium of institutions or individual institutions from WVNET contracts. Services include software license renewals

(also known as maintenance support), new software licenses, consulting and scribing for Degree Works. There was minimal scribing costs for Degree Works in FY 2018; however it is anticipated to increase with catalog changes in FY 2019.

Software vendors, such as Oracle and Ellucian, typically mandate a 4 percent increase in renewals.

WVNET procurement provides nearly all higher education institutions with the Microsoft Campus Agreement that provides access to all Microsoft products at a substantially lower price. By bidding as a consortium under WVNET, Microsoft resellers offer WVNET lower prices due to the total FTE of this consortium. This contract is rebid every three years.

Chart 1
West Virginia Network for Educational Telecomputing
Proposed FY 19
Combined Budget

	FY 2018 Budget	FY 2018 Actuals and Estimated Accruals	FY 2019 Proposed Budget	FY 2019 Proposed Budget Change from FY 18 Budget	FY 2019 Proposed Budget Change from FY 18 Actuals
<u>Revenue</u>	\$13,742,592	\$11,991,819	\$13,277,957	(\$464,635)	\$1,286,138
State Appropriation	1,578,941	1,578,941	1,681,744	102,803	102,803
HERA	50,000	50,000	0	(50,000)	(50,000)
Other Revenue	11,274,456	10,360,748	11,130,849	(143,607)	770,101
Dept of Adm Grant	2,130	2,130	0	(2,130)	(2,130)
Cash Reserve	837,065	0	465,364	(371,701)	465,364
<u>Expenditures</u>	13,742,592	11,935,382	13,277,957	(464,635)	1,286,138
Personnel	3,680,945	3,600,026	4,146,572	465,627	490,109
Benefits	883,427	773,061	849,298	(34,129)	76,237
Current Expenses	8,588,008	7,317,353	7,727,087	(860,921)	409,734
Repairs and Alterations	170,212	62,373	120,000	(50,212)	57,627
Assets Equipment	335,000	182,569	435,000	100,000	252,431
Assets Other	85,000	0	0	(85,000)	0
<u>Balance</u>	0	56,437	0	0	0

Chart 2

WVNET FY 2019 Proposed Combined Budget

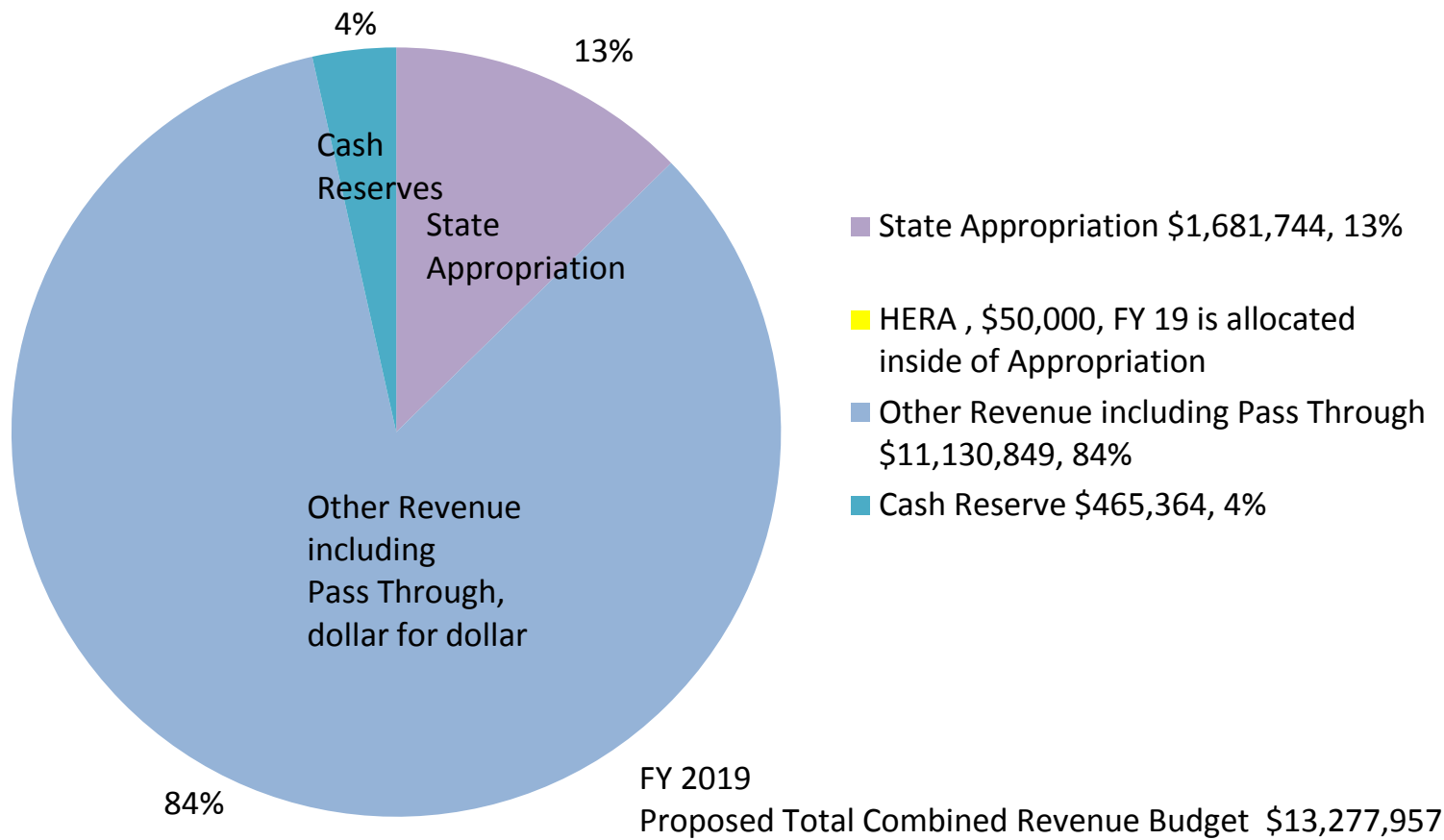


Chart 3

WVNET
FY 2019

Proposed Combined Budget
Expenses

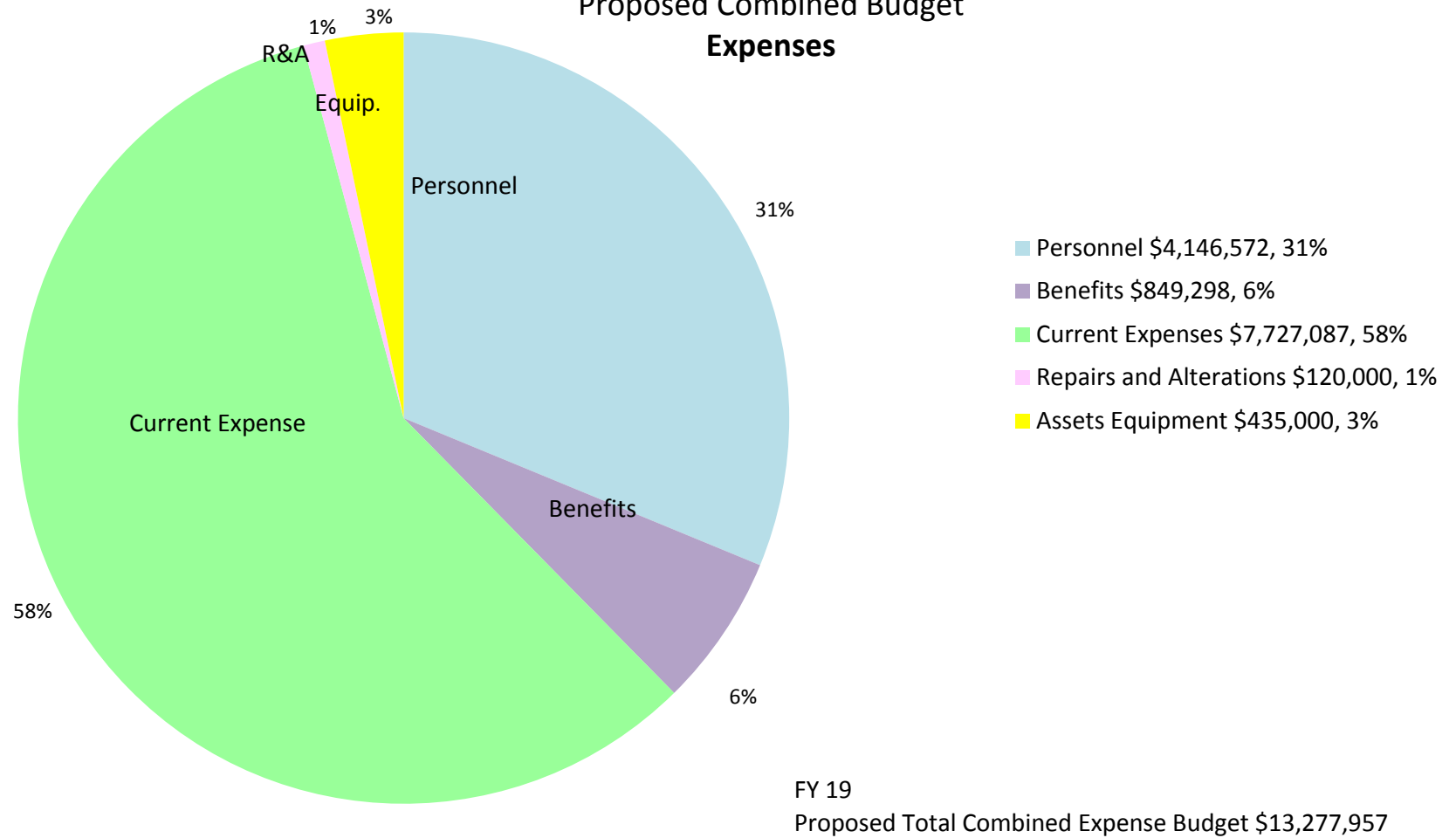


Chart 4
West Virginia Network for Educational Telecomputing
Proposed FY 19
Operating Budget

	FY 2018	FY 2018	FY 2019	FY 2019 Proposed	FY 2019
	Budget	Actuals and Estimated Accruals	Proposed Budget	Budget Change from FY 18 Budget	Proposed Budget Change from FY 18 Actuals
<u>Revenue</u>	\$8,645,205	\$7,687,889	\$8,657,094	\$11,889	\$969,205
State Appropriation	1,578,941	1,578,941	1,681,744	102,803	102,803
HERA , \$50,000, FY 19 is allocated inside of Appropriation	50,000	50,000	0	(50,000)	(50,000)
Contracts and Services	6,177,069	6,056,818	6,509,986	332,917	453,168
Federal RUS Grant	2,130	2,130	0	(2,130)	(2,130)
Cash Reserve	837,065	0	465,364	(371,701)	465,364
<u>Expenditures</u>	\$8,645,205	\$7,631,452	\$8,657,094	\$11,889	969,205
Personnel	3,680,945	3,600,026	4,146,572	465,627	490,109
Benefits	883,427	773,061	849,298	(34,129)	76,237
Current Expenses	3,490,621	3,013,423	3,106,224	(384,397)	92,801
Repairs and Alterations	170,212	62,373	120,000	(50,212)	57,627
Asset Equipment	335,000	182,569	435,000	100,000	252,431
Asset Other (Software)	85,000	0	0	(85,000)	0
<u>Balance</u>	0	56,437	0	0	0

Chart 5

WVNET
FY 2019
Proposed Operating Budget
Revenue

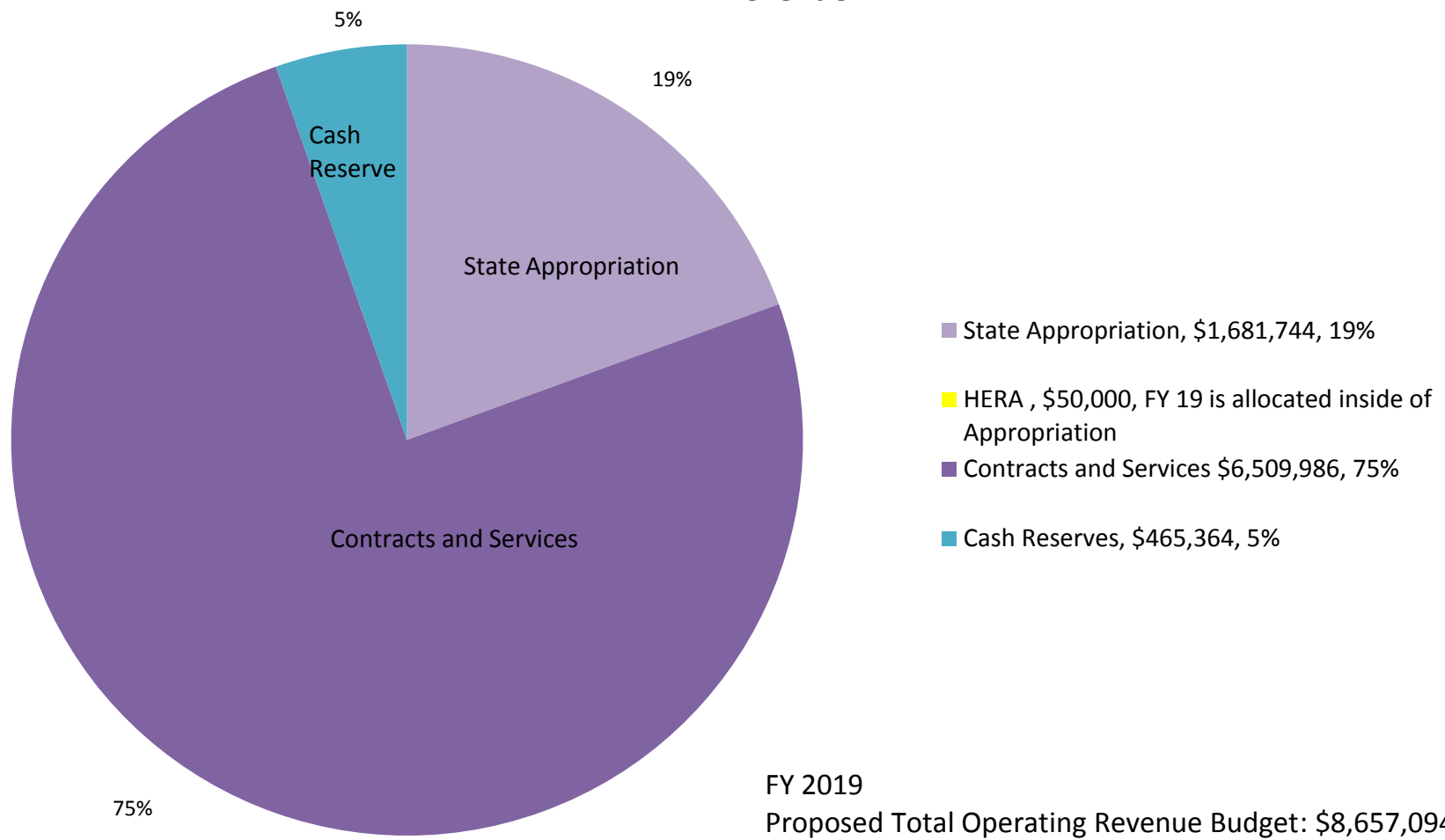


Chart 6
WVNET
FY 2019
Proposed Operating Budget

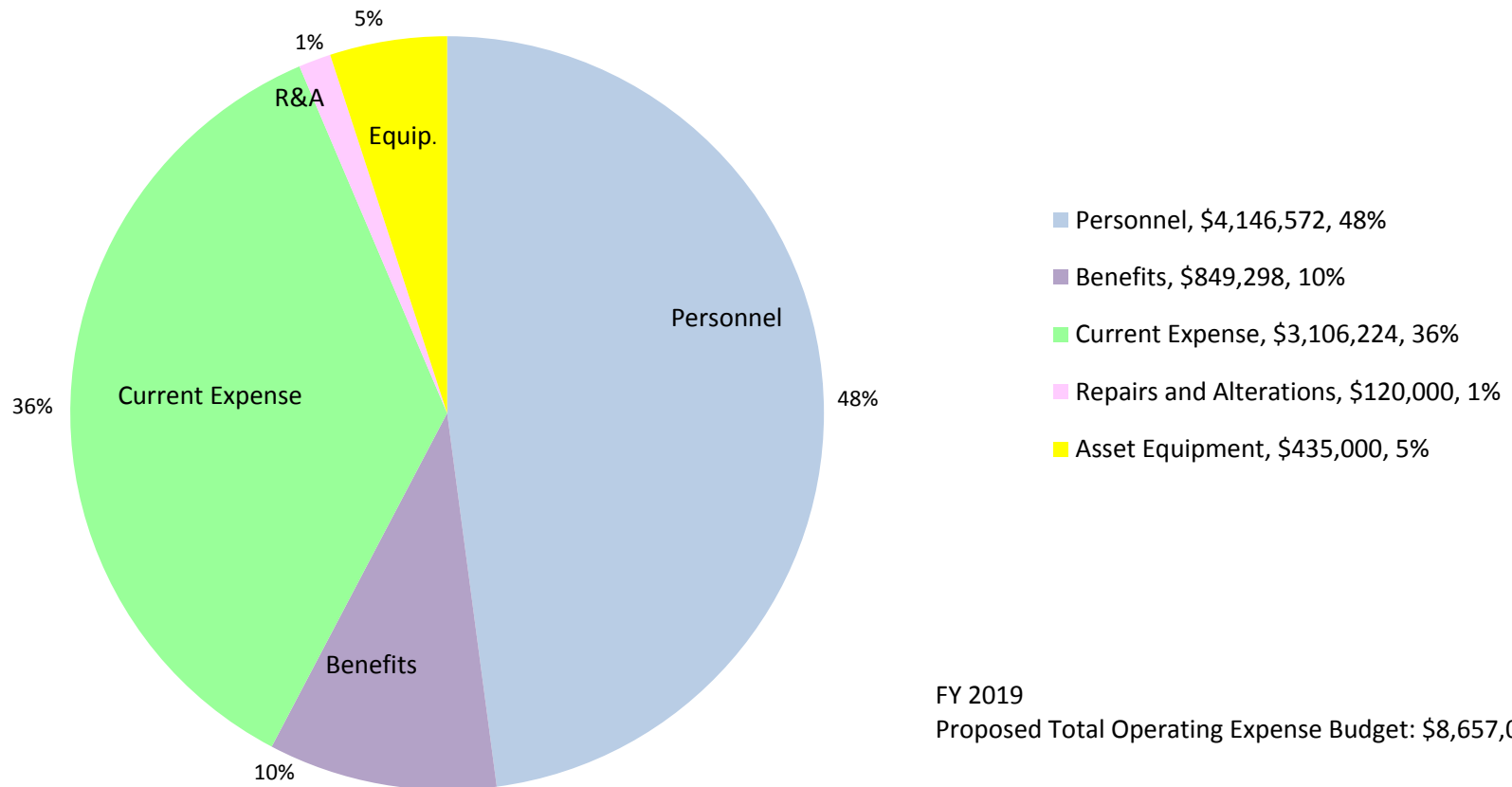
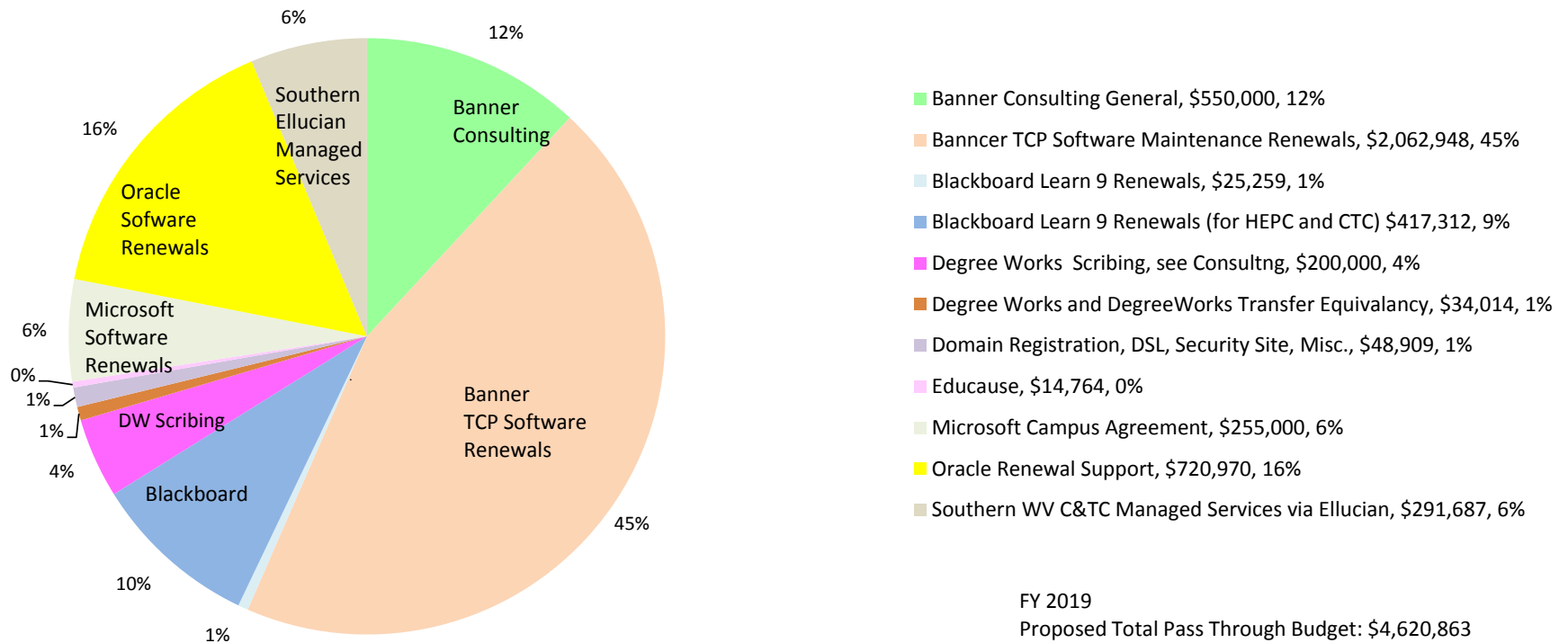


Chart 7
West Virginia Network for Educational Telecomputing
Proposed FY 19
Pass Through Budget

	FY 2018 Budget	FY 2018 Actuals and Estimated Accruals	FY 2019 Proposed Budget	FY 2019 Proposed Budget Change from FY 18 Budget	FY 2019 Proposed Budget Change from FY 18 Actuals
Revenue	\$5,097,387	\$4,303,930	\$4,620,863	(\$476,524)	\$316,933
DegreeWorks Scribing or Training	200,000	0	200,000	0	200,000
Degree Works and Degree Works Equivalency	5,312	31,280	34,014	28,702	2,734
Banner Consulting General	687,334	220,177	550,000	(137,334)	329,823
Banncer TCP Maintenance Renewals	1,971,474	1,983,605	2,062,948	91,474	79,343
Blackboard Learn 9 Renewals	25,259	25,259	25,259	0	0
Blackboard Learn 9 Renewals HEPC and CTCs	441,887	417,312	417,312	(24,575)	0
Domain Registration, DSL, Security Site, Misc.	116,273	46,941	48,909	(67,364)	1,968
Educause	11,000	13,929	14,764	3,764	835
Microsoft Campus Agreement	653,140	591,678	255,000	(398,140)	(336,678)
Oracle Renewal Support mandatory	737,518	693,281	720,970	(16,548)	27,689
Southern WV C&TC Managed Services via Ellucian	248,190	280,468	291,687	43,497	11,219
Expenditures	\$5,097,387	\$4,303,930	\$4,620,863	(\$476,524)	\$316,933
DegreeWorks Scribing or Training	200,000	0	200,000	0	200,000
Degree Works and Degree Works Equivalency	5,312	31,280	34,014	28,702	2,734
Banner Consulting General	687,334	220,177	550,000	(137,334)	329,823
Banncer TCP Maintenance Renewals	1,971,474	1,983,605	2,062,948	91,474	79,343
Blackboard Learn 9 Renewals	25,259	25,259	25,259	0	0
Blackboard Learn 9 Renewals HEPC and CTCs	441,887	417,312	417,312	(24,575)	0
Domain Registration, DSL, Security Site, Misc.	116,273	46,941	48,909	(67,364)	1,968
Educause	11,000	13,929	14,764	3,764	835
Microsoft Campus Agreement	653,140	591,678	255,000	(398,140)	(336,678)
Oracle Renewal Support mandatory	737,518	693,281	720,970	(16,548)	27,689
Southern WV C&TC Managed Services via Ellucian	248,190	280,468	291,687	43,497	11,219
Balance	0	0	0	0	0

Chart 8
WVNET
FY 2019
Proposed Pass Through Budget



**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Approval of Revisions to Series 4, Procedural Rule, Rules and Administrative Procedures

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the revisions to Series 4, Procedural Rule, Rules and Administrative Procedures, to be filed with the Secretary of State.

STAFF MEMBER: Candace Kraus

BACKGROUND:

At its meeting of June 22, 2018, the Commission approved revisions to Series 4, Procedural Rule, Rules and Administrative Procedures. With the enactment of House Bill 2815 in 2017, the authority and involvement of the Commission in the promulgation of rules by the governing boards was changed, minimizing oversight of the rules enacted by the exempted schools and limiting oversight of the rules enacted by the remaining governing boards. Series 4 sets out the rule-making procedures for those schools under the jurisdiction of the Commission.

During the thirty-day public comment period, the following comments were received:

Comment: I understand that some of the HEPC's proposed changes to 133CSR4 are necessary to comply with 2017 HB 2815, which once again exempts certain higher ed institutions from certain HEPC regulation and oversight. However, in a couple of places the changes are unwarranted and even enable violation of WV code. Further, this is also an (sic) great opportunity to change other parts of this rule to clarify and better fulfill the HEPC's duty in "Assisting governing boards to carry out their duty effectively to govern the individual institutions of higher education;" (WV Code §18B-1B-4(a)(3)(B) and to "...guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate... 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..." (WV Code §18B-1-6(c)(3)

The general nature of my comments regarding this proposed rule relate to WV open-meeting law of WV Code §6-9A, the WV Freedom-of-information-Act of WV Code §29B, and the general rule-making requirements for all state institutions of WV Code §29A-1. These articles of code are fundamental to democratic governance and public sovereignty in West Virginia and must not be minimized, marginalized or preempted by this or any

and the general rule-making requirements for all state institutions of WV Code §29A-1. These articles of code are fundamental to democratic governance and public sovereignty in West Virginia and must not be minimized, marginalized or preempted by this or any agency's rules. WV Code §29A-3A and §18B describe requirements specific to Higher Education that work with but do not supersede the former three articles. (See eg. §29A-1-4. Application of open governmental proceedings law – "All meetings of an agency... for the purpose of making a decision or deliberating toward a decision as to the form and substance of a rule... are subject to the open governmental proceedings law..." or §29A-1-3(b) Application of chapter; limitations - "...That the rules promulgated by the state colleges and universities shall only be filed with the higher education [commission or council]...") The wording of WV Code §29A-3A and §18B must not be interpreted to exclude higher ed institutions from following WV Code §6-9A, §29B, or §29A-1. No governing board of any state institution should feel entitled, privileged or justified in any way, even their own expediency, to be excluded from these laws that protect the public's right to understand, oversee, scrutinize and be notified of and involved in the rule-making of those who have accepted the invitation of our elected governor to serve on these governing boards as servants to the public. Nor should the HEPC feel the need or pressure to enable this wrong-headed attitude with a minimalist interpretation of these laws. Such a tradition of public fear and "non-disclosure" in our public agencies has, unfortunately, become the customary pattern and practice of many state and local agencies, particularly BOG's, and has damaged the public's sovereignty, trust, and ability to assume its own active participations in our representative governance. Empowering the public and the four-year institutions' constituents and other interested parties ought to be duties of the HEPC, especially since the HEPC is responsible for the "higher learning" of the state.

Response: The comments are beyond the scope of establishing guidelines for the process of promulgating rules and administrative procedures. The proposed rule is compliant with the authorizing statute, W.V. Code §18B-1-6.

Comment: Statements such as that found in the introduction of the open-meeting act help us see more clearly the legislative intent and purpose of law and understand that which is implicitly as well as explicitly required. WV Code §6-9A-1 states - "...The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them... The people insist on remaining informed so that they may retain control over the instruments of government created by them... Open government allows the public to educate itself about government decision-making through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government... Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs..." The HEPC should

not choose to ignore the fully meaning of the law and guide BOG's toward as minimal a standard as one can get away with. I ask the Chancellor and HEPC to understand the law fully and guide the BOG's toward the maximum of public rights allowable, thereby fulfilling the stated purposes of these laws.

Response: Consistent with statutory rule-making requirements, the proposed rule requires a thirty-day public comment period prior to final approval of any rule by a governing board.

Comment: The following are my suggested amendments to the proposed TITLE 133 PROCEDURAL RULE that will emphasize and better guide the BOG's to understand and comply with what is already required in state code, but has long been neglected or misunderstood, to the detriment of West Virginia. Please consider these suggestions well and implement them as seems best to you to best accommodate their intent. Further comments are interspersed throughout the proposed rule as needed and relevant to my suggested changes.

Response: Each comment provided has been analyzed and considered for amendment.

Comment: Recommends changing references to the West Virginia Code from "code" to "WV code" throughout. I appreciate the apparent intent of the HEPC in adding the word "code" to 3.4, although it would be much better if each proposed amendment were accompanied by a statement of reason and, e.g. explaining the facts, need and merit for the decision to add "code", especially since it has large legal ramifications and confirms what I've said in Comment 1. Some of my suggestions below involve just that for the BOG's.

Response: Changing references from "code" to "WV code" would add clarity to the rule and staff recommends that this change be accepted.

Comment: My additions above, including the addition of 1.6. Other Applicable WV Code, necessarily clarify and strengthen the HEPC's addition of the word "code".

Response: The suggested additional WV Code references are beyond the scope of the authorizing statute for the proposed rule, WV Code §18B-1-6.

Comment: Recommends modifying §133-4-4. Rulemaking Process, to read as follows: 4.1. Consultation. Institution officers are ~~encouraged~~ required to consult with interested groups before presenting a proposed rule to the governing board for consideration. All facts, opinions and other information and evidence gathered for the purpose of determining need, form and content, criteria for sufficiency in meeting need and merit of a proposed rule or its amendment or repeal shall be considered public record and shall be written, recorded and filed according WV Code. Recent amendments to W.Va. Code §18B-9A-7(c) in 2018 House Bill 2542 and other code make it a requirement rather than an option to consult with interested parties during at least some rule-making. Why

“encourage” BOG’s to get away with less than the legal minimum of constituent involvement by the BOG’s? They should know that they are required to do so and be guided to always consult with interested groups.

Response: Institutions are not required by law to consult with interested groups prior to governing board consideration, and the thirty-day public comment period provides an opportunity for input prior to final adoption by the board.

Comment: All determinations of proposed institutional need and policy merit, sufficiency and readiness for approval (“form and substance” in §29A-1-4) are “decisions” under §6-9A-1(1) and §29A-1-4 and are required to be made in open meeting under §6-9A-3. For example, §29A-1-4 states, “(a) All meetings of an agency, board or commission of the executive branch of government or of the legislative rule-making review committee which may only be convened upon the presence of a required quorum, and which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of a rule, as defined in subsection (i), section two of this article, are subject to the open governmental proceedings law as set forth in article nine-a, chapter six of this code...” The BOG’s should be guided to share all their information with the public and constituents so the law and its purpose stated in §6-9A-1 can be better fulfilled.

Response: The comments are beyond the scope of the proposed rule.

Comment: Currently many BOG’s have a habit of not sharing the information they use to make their rule-making determinations and other decisions with the public. This information is considered public domain and should be written down and recorded so the public can have access to it.

Response: The comments are beyond the scope of the proposed rule.

Comment: To avoid dealing with the public or giving out information, operating like private boards with “non-disclosure agreements”, many BOG’s simply don’t write things down or deliberately don’t communicate by written messages such as e-mails. They rely instead on “informal” oral meetings in private to consider information and make determinations, believing the law allows them to get away with this. Governing boards must not be allowed to continue this practice of avoiding FOIA duties (WV §29B) by simply failing to make written record of facts, information and other evidence that the public has a right to have access to, and thus feeling justified making deliberations toward determinations informally in private, such as between a designated board member and staff. The HEPC should guide, and then use its authority if necessary to ensure compliance with the law.

Response: The comments are beyond the scope of the proposed rule. Additionally, government officers and employees are not required by law to document or record all deliberations or communications, as such would be extremely inefficient, unduly burdensome, and completely unnecessary.

Comment: This pattern and attitude of hiding rule-making from the public is illustrated by

the recent rule-make of FSU's BOG Policies 63, 64 and 65. The information gleaned from numerous meetings between HR administration and the staff last year was not written down and recorded. (See Response to Hansen FOIA Request.) Rather, the information was shared orally with a few board members in several unrecorded private "informal" meetings. All deliberations and determinations regarding the policies' needs, merit and readiness for filing and public notification were made in private by individual members, or even by the president, with almost none of the gathered facts, evidence, or constituent input regarding the policies being shared with the other BOG members. Thus, the BOG's decision to "approve" the policies was uniformed, indefensible and unlawful.

Response: *The comments are beyond the scope of the proposed rule. Consistent with statutory rule-making requirements, the proposed rule requires a thirty-day public comment period prior to final approval of any rule by a governing board. Additionally, government officers and employees are not required by law to document or record all deliberations or communications, as such would be extremely inefficient, unduly burdensome, and completely unnecessary.*

Comment: Making these determinations in private before presenting a completed version of the proposed rule for public comment, without the public witnessing the deliberation of rule-making or understanding the reasons for the proposed rules, amendments, or repeals, is a violation of duty, ethics, trust public sovereignty and WV law that is actually commonly made by many governing boards. I urge you to please include wording that will help guide BOG's away from this habitual perspective, pattern and practice of avoiding scrutiny and maintaining an elitist sense of entitlement that avoids the public and sees the public as the "problem".

Response: *Consistent with statutory rule-making requirements, the proposed rule provides an opportunity for public input by requiring a thirty-day public comment period prior to final adoption of any rule by a governing board.*

Comment: Recommends inserting the following in §133-4-4.2:

Determination and Approval of Proposed Notice and Rulemaking.

4.2.a. To determine that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the governing board is required by law to:

(1) Record and store as written public record all fact-finding and other evidence gathered and considered by the governing board when determining the need, content, and criteria for sufficiency in meeting the determined need and merit of the proposed policy or its amendment or repeal;

(2) Meet in formal open meeting as a quorum to consider said facts and other evidence and deliberate in public toward the determination of need, content, criteria for sufficiency, merit, and other determinations necessary for the preparation and approval of a proposed rule or amendment or its repeal;

(3) Provide the facts and other evidence to the public in the meeting agenda;

(4) Record the determinations and main points of discussion, pro and con, in the

meeting minutes;

(5) Provide a clear, succinct written statement of rationale for the determination of adoption, amendment or repeal of the policy to be posted in meeting minutes, posted with public notification of comment request, and submitted with filing of notification with the HEPC, together with the facts and other evidence gathered and considered by the governing board.

(6) Provide maximum public openness and understanding that the law allows under WV §6-9A rather than the minimal it can be construed to require.

Determinations of need, criteria for sufficiency in meeting those needs, merit and other “form and substance” are decisions that must be made before a rule is ready for public notification and filing with the HEPC. It would be greatly helpful to the institutions for their BOG’s to view and practice these determinations as decisions that require public involvement before a rule’s formal approval. Unlike the public’s option to avoid participation in the Primaries and merely vote in the general election for a candidate chosen for them., the BJOG’s are duty-bound to participate fully in the deliberations and determinations of rule-making before approving a policy. These steps of first determination, then approval for public comment will improve each BOG’s rule-on-rules and guide them to greater transparency, personal knowledge and accountability as board members, better decisions and policies, greater honesty and respect for the public and the university constituents whom they serve.

Response: The comments are beyond the scope of the proposed rule. Consistent with statutory rule-making requirements, the proposed rule requires a thirty-day public comment period prior to final approval of any rule by a governing board. Additionally, government officers and employees are not required by law to document or record all deliberations or communications, as such would be extremely inefficient, unduly burdensome, and completely unnecessary.

Comment: Each suggested step above merely involves a more public-oriented understanding of existing code, and will enable the BOG’s to better understand the various parts of pertinent and controlling “WV code”, especially In light of the HEPC’s new addition of “code” in Section 3.4.

Response: The comments are beyond the scope of the proposed rule.

Comment: Recommends modifying §133-4-4.2 to read as follows:

4.2.b. If ~~When~~ a governing board determines that a rule ~~concerning a subject matter under the governing board’s jurisdiction~~ should be adopted, amended, or repealed, the governing board ~~should~~ shall approve a notice of proposed rulemaking to be filed with the Commission. A notice of proposed rulemaking shall ~~should~~ include at least:

(1) The fact-finding and other evidence used by the governing board in making its determinations in open meeting during the rule-making process and stored as public record;

(2) A brief description of the subject matter of the rule, the statements of determinations and their rationale, an explanation of how comments will be received, the deadline for receiving comments, and contact information for the person who has been designated to receive comments; and

(3) A copy of the proposed rule if adoption or amendment is proposed or a copy of the current rule if repeal is proposed. This rule should use the word “shall” rather than “should” or “may” because the WV code already exists to require this, if understood and applied; it isn’t the HEPC requiring it. The HEPC need not feel compelled to soften the wording in response to its own diminished authority of 2017 HB 2815. Rather, it is the WV law itself that is requiring these things, and the HEPC is merely doing its duty to enlighten and guide the BOG’s so they don’t step on the law and violate their obligations and commitments to the public and their institutions. Please help them stop doing this by implementing some form of these additional steps in the rule.

Response: Suggestions to change “should” to “shall” are consistent with statutory requirements and staff recommends that this change be approved.

Comment: This step of approving a rule for notification of public comment and filing with the HEPC again guides the BOG’s toward greater transparency, accountability, honesty and respect for the public and the university constituents whom they serve. The public needs these facts and statements of determination and rationale so we can comment knowledgably and effectively on proposed rule and the facts, evidence and reasons behind them.

Response: As this proposed rule provides for governing boards to submit notice of proposed rule-making to the Chancellor, such notice is effectively also notice to the Commission.

Comment: It is so important a BOG not abdicate its rule-making authority to administration or authorize a board member to make all rule-making determinations in private in consultation with administration, and then simply vote on the proposed rule as it is placed on the meeting agenda, without consideration of the facts and evidence used in private to make the needed determinations. This is what the FSU BOG has done routinely, including during the making of its Policies 63-65, and what other BOG’s do also.

Response: The comments are beyond the scope of the proposed rule.

Comment: Recommends modifying §133-4-4.3 through §133-4-4.5.b to read as follows:
4.3. Notice of Proposed Rulemaking. Notices of proposed rulemaking shall ~~should~~ be provided directly to the Chancellor, those persons representing students, faculty, and staff at the institution, and other interested parties. In addition, notices of proposed rulemaking shall be posted prominently at a location or locations accessible to the public and identified in the institution’s rule on rules, as well as posted on the institution’s website, and copies should be made available at no cost to any requester.

4.4. Comment Period. Except for emergency rules, a notice of proposed rulemaking must provide for a public comment period of at least thirty (30) days during which written

comments will be received before final adoption of the rule. A President or governing board may also provide for a public hearing.

4.5. Approval of Final Rule.

4.5.a. If a governing board ~~originally~~ properly approved a notice of rulemaking at a previous meeting and no comments are received during the comment period, a proposed rule need not be re-approved by the governing board if the board provides so at the time it approves the proposed rule.

4.5.b. If written comments are received or a hearing held during the comment period, the governing board shall ~~should~~ summarize the comments received and/or made and make a written determination concerning each issue raised that includes a full statement of rationale for the determination, to be included in the agenda of and considered in the meeting in which the governing board approves the rule for final filing with the Commission. The governing board may amend a proposed rule as a result of the comments or evidence received. Any amendment shall be accompanied by a written explanation that includes reference to the corresponding recorded evidence for the amendment and the reasoning for its determination. All written comments and evidence received, and determinations with explanations made by the governing board shall ~~should~~ be made available in the manner set out in Section 4.3 of this rule at least ten (10) days prior to the meeting in which the governing board gives final approval to the rule and be carefully preserved by the institution and open for public inspection and copying for a period of at least five (5) years from the date of final board action, and shall be considered in during (sic) the meeting before the vote for final approval. Once again, this step of final approval and filing the rule with the HEPC for its comments includes public documentation of the determination and reasons for the final approval and any amendments therein based on public comments and the BOG's deliberations of the comments and other new evidence in the meeting minutes.

Response: Government officers and employees are not required by law to document or record all deliberations or communications, as such would be extremely inefficient, unduly burdensome, and completely unnecessary. Suggestions to change "should" to "shall" are consistent with statutory requirements and staff recommends that this change be approved.

Comment: Again, the BOG must not lazily allow individual board members to make all determinations of rule-making in private, then simply move to approve the rule in public meeting without consideration of the facts and evidence available for the public to observe and understand.

Response: The comments are beyond the scope of the proposed rule.

Comment: Recommends modifying §133-4-4.3.c through §133-4-4.3.d to read as follows: 4.5.c. After final approval of the proposed rule, The the institution shall furnish the Chancellor or his/her designee with a copy of the final proposed rule at least fifteen (15) twenty five (25) days prior to the governing board's posting of the meeting agenda that includes formal adoption of the final rule.

4.5.d. ~~Except as set forth in Section 4.5.f of this rule, any rule adopted by a governing~~

~~board shall not be effective until reviewed and commented on by the Chancellor or his/her designee.~~ The Chancellor or his/her designee shall notify the governing board of any specific or general objections and/or suggestions to the rule within fifteen (15) days of receiving the proposed rule ~~and allow~~ thereby allowing the governing board to consider the comments at least ten (10) days prior to formal adoption of the proposed rule and make available the Chancellor's comments to the public in the agenda of the meeting wherein the board intends to address the objections and/or suggestions and approve the rule for adoption. The proposed rule may not become effective or implemented until the governing board places the Chancellors comments or suggestions on its agenda and considers them at a meeting of the governing board. If the Chancellor provides no comments before fifteen days, the rule may be adopted as finally approved. My amendment here combines 4.5 c, d, and f into one, making the rule easier to understand and less redundant.

Response: The proposed rule is consistent with statutory requirements in both the time periods provided and the requirement that the Chancellor's responses be included in the governing board's agenda.

Comment: Increasing the filing deadline to 25 days or so before final adoption is necessary to allow the BOG to notify the public of the HEPC's objections and/or suggestions, to put them in the meeting agenda and allow the public to observe in open meeting what the BOG chooses to do with them.

Response: The proposed rule is consistent with statutory requirements regarding time periods.

Comment: It is a violation of open-meeting laws to deliberate and make a determination or to amend the rule in private using the Chancellor's comments before adoption. This HEPC rule should guide the BOG's so they don't do this. If there are no comments from the HEPC, the public should be notified of such and the rule be formally adopted in open meeting as previously approved.

Response: The comments are beyond the scope of the proposed rule.

Comment: It is a violation of FOIA to not make public the final written comments of the HEPC and the written determinations and rationale used by the BOG to further amend or approve for adoption the rule. This HEPC rule should guide the BOG's so they record and share with the public those comments before adoption.

Response: The proposed rule is consistent with the statutory requirement that the Chancellor's responses be included in the governing board's agenda.

Comment: Again, each suggested step simply encourages a more public-oriented perspective of existing code, and will enable the BOG's to understand the various parts of pertinent and controlling WV code as they should, and thereby responsibly ensure that their policies are as good as they should be.

Response: *The proposed rule is consistent with the authorizing statute.*

Comment: This rule must not exempt any institution from dealing publicly with the public's or the HEPC's comments. The objections and suggestions of the public and Chancellor are public record and considering them in private towards a decision is a violation of WV Code §6-9A. WV Code §18B must not be understood to impinge on §6-9A, §29B, or 29A-1, even for the expediency of an "exempted" board. Nor should any governing board feel free to simply ignore the Chancellor's comments. Whether the HEPC has weight or not, the public has a legal right to view the comments and scrutinize the board's use of them.

Response: *The proposed rule is consistent with the authorizing statute and the exempt institutions are so designated by WV Code.*

Comment: Please don't rely on public apathy or ignorance to appease certain institutions in the name of their expediency at the expense of the public and the institutions' constituents. These amendments will enable to HEPC to more easily and effectively use its authority and resources to train all our higher ed institutions to act more proactively and righteously in the interests of the public.

Response: *The proposed rule is consistent with the authorizing statute.*

Comment: Recommends modifying §133-4-4.5.e through §133-4-5.2 to read as follows: 4.5.e d. In situations where the governing boards of Marshall University and West Virginia University have been given authority that inherently requires the governing board to promulgate and adopt a rule, that authority is void until the governing board adopts a rule in a manner consistent with this rule and state code.

~~4.5.f. Any rule adopted by the governing boards of Marshall University or West Virginia University the exempted schools under West Virginia Code §18B-1-2 shall not be subject to Section 4.5.d. of this rule. Marshall University and West Virginia University However, the exempted schools shall submit their rules proposed rule to the Chancellor and the Chancellor shall submit any comments or suggestions to the governing board within thirty (30) fifteen (15) days of receipt of the proposed rule. Any comments or suggestions made by the Chancellor regarding a proposed rule by these two any governing boards of non-exempted schools may not become effective or implemented until the governing board places the comments or suggestions on its agenda and considers them at a meeting of the governing board. [all included in 4.5.c]~~

§133-4-5. Posting and Publication of Approved Formally Adopted Rules.

5.1. Approved Formally adopted rules shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

5.2. Approved Formally adopted rules shall be enumerated in a manner that makes them easily identifiable. Sections 4.2 and 4.5 designate Final Approval as the step before the Chancellor's comments, and Formal Adoption as the step after the Chancellor's comments. Using the term Approval here in §133-4-5 contradicts 4.2 and 4.5 and makes the rule steps confusing. The term Formally Adopted should be used here.

8.4. The Commission has authority under §18B-1B-4(c)(1) to object to a governing board's rule making procedures when they are found to be in violation of WV code, and may temporarily suspend a governing board's rule-making or other authority in order to bring the governing board into compliance with WV state law and reestablish sound, responsible institutional governance. This rule should remind BOG's of the authority and power the HEPC has to ensure that they follow the law. Certain institutions may be exempt from certain steps or requirements of the HEPC, but they cannot be exempt for the fundamental laws of openness, rule-making and public service. The HEPC remains authorized to hold all BOG's accountable for their actions in following the laws.

Response: *The comments are beyond the scope of the proposed rule.*

Comment: The HEPC should be up front about it's commitment to ensure that BOG's comply with the open-meeting, rule-making and information laws. The HEPC has often ignored and even abdicated to the public its power and responsibility to oversee and ensure, if necessary, BOG compliance with law and exercise of sound, responsible governance, relying instead on the public to complain in circuit court when a BOG violates the law. The addition of 8.4 would help the HEPC avoid such abdication and make its oversight duties more easily rendered and effective with deliberate addition of this authority in the rule.

Response: *The proposed rule is consistent with the authorizing statute.*

Staff recommends approval of the revised Series 4 for filing with the Secretary of State.

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

**SERIES 4
RULES AND ADMINISTRATIVE PROCEDURES**

§133-4-1. General.

1.1. Scope. Rule establishing process for adoption, amendment, or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education under the jurisdiction of the West Virginia Higher Education Policy Commission (Commission).

1.2. Authority. West Virginia Code §18B-1-6(c)(3).

1.3. Filing Date. ~~March 20, 2013.~~

1.4. Effective Date. ~~April 19, 2013.~~

1.5. Repeals and replaces previous Series 4 dated ~~July 31, 2006~~ April 19, 2013.

§133-4-2. Definitions.

2.1. Rule. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application ~~and future effect that also~~ which has institution-wide effect or affects the rights, privileges or interests of employees, students or citizens. The following are not rules:

2.1.a. Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution that deal solely with the internal management or responsibilities of a single unit, division, department or school; or

2.1.b. Academic curricular policies that do not constitute a mission change for the institution.

2.2. Administrative Procedure. Any regulation, guideline, directive, standard or statement of policy or interpretation of future effect that does not qualify as a “rule.”

§133-4-3. Application.

3.1. This rule shall apply to the adoption, amendment, or repeal of any rule by a governing board of any public higher education institution under the ~~West Virginia Higher Education Policy Commission's~~ jurisdiction, as well as to the posting and publication of rules and administrative procedures.

3.2. A governing board may not delegate responsibility for approving a rule to the President.

3.3. The Chancellor shall periodically ~~provide~~ advise institutions ~~with examples~~ of topics that should be dealt with only through the rule-making process. If the governing board or President of an institution is unsure whether the rulemaking process must be used, the governing board or President shall seek guidance from the Chancellor or his/her designee.

3.4. Each institution's governing board shall adopt a rule that outlines the rulemaking process at that institution pursuant to this rule and West Virginia Code.

3.5. No rule shall be adopted, amended, or repealed by a governing board without the appropriate provisions in this rule and its own rule on rules being met.

§133-4-4. Rulemaking Process.

4.1. Consultation. Institution officers are encouraged to consult with interested groups before presenting a proposed rule to the governing board for consideration.

4.2. Approval of Proposed Notice and Rulemaking. If a governing board determines that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the governing board ~~may~~ shall approve a notice of proposed rulemaking. A notice of proposed rulemaking shall include:

4.2.a. A brief description of the subject matter of the rule, an explanation of how comments will be received, the deadline for receiving comments, and contact information for the person who has been designated to receive comments; and

4.2.b. A copy of the proposed rule if adoption or amendment is proposed or a copy of the current rule if repeal is proposed.

4.3. Notice of Proposed Rulemaking. Notices of proposed rulemaking shall be provided directly to the Chancellor, those persons representing students, faculty, and ~~classified employees~~ staff at the institution, and other interested parties. In addition, notices of proposed rulemaking shall be posted prominently at a location or locations accessible to the public and identified in the institution's rule on rules, as well as posted on the institution's website, and copies be made available at no cost to any requester.

4.4. Comment Period. Except for emergency rules, a notice of proposed rulemaking must provide for a public comment period of at least thirty (30) days during which written comments will be received before final adoption of the rule. A President or governing board may also provide for a public hearing.

4.5. Approval of Final Rule.

4.5.a. If a governing board originally approved a notice of rulemaking at a previous meeting and no comments are received during the comment period, a proposed rule need not be re-approved by the governing board if the board provides so at the time it approves the proposed rule.

4.5.b. If written comments are received or a hearing held during the comment period, the governing board shall summarize the comments received and/or made and make a determination concerning each issue raised. The governing board may amend a proposed rule as a result of the comments or evidence received. All written comments and evidence received and determinations made by the governing board shall be made available in the manner set out in Section 4.3 of this rule at least ten (10) days prior to the meeting in which the governing board gives final approval to the rule and be carefully preserved by the institution and open for public inspection and copying for a period of at least five (5) years from the date of final board action.

4.5.c. The institution shall furnish the Chancellor or his/her designee with a copy of the final proposed rule ~~within thirty fifteen (30) (15) days of~~ prior to the governing board's formal adoption of the final rule.

4.5.d. Except as set forth in Section 4.5.f of this rule, any rule adopted by a governing board shall not be effective until ~~approved~~ reviewed and commented on by the Chancellor or his/her designee. The

Chancellor or his/her designee shall notify the governing board of any specific or general objections to the rule within fifteen (15) days of receiving the proposed rule and allow the governing board to address the objections. ~~If the governing board disagrees with the objections, it may protest the Chancellor's decision to the West Virginia Higher Education Policy Commission. If the Chancellor or his/her designee has not provided any objections to a rule within thirty (30) days of receipt of its final version it shall be deemed approved. Approval by the Chancellor or West Virginia Higher Education Policy Commission may not be withheld unless the rule is inconsistent with state or federal law or the policies and mission of the West Virginia Higher Education Policy Commission.~~

4.5.e. In situations where the governing boards ~~of Marshall University and West Virginia University~~ have been given authority that inherently requires the governing board to promulgate and adopt a rule, that authority is void until the governing board adopts a rule in a manner consistent with this rule and West Virginia Code.

4.5.f. Any rule adopted by the governing boards ~~of Marshall University or West Virginia University~~ the exempted schools under West Virginia Code §18B-1-2 shall not be subject to Section 4.5.d. of this rule. ~~Marshall University and West Virginia University~~ However, the exempted schools shall submit their ~~rules~~ proposed rule to the Chancellor and the Chancellor shall submit any comments or suggestions to the governing board within ~~thirty (30)~~ fifteen (15) days of receipt of the proposed rule. Any comments or suggestions made by the Chancellor regarding a proposed rule by ~~these two~~ any governing boards of non-exempted schools may not become effective or implemented until the governing board places the comments or suggestions on its agenda and considers them at a meeting of the governing board.

§133-4-5. Posting and Publication of Approved Rules.

5.1. Approved rules shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

5.2. Approved rules shall be enumerated in a manner that makes them easily identifiable.

5.3. No later than October 1 of each year, each institutional governing board shall file with the ~~West Virginia Higher Education Policy~~ Commission a list of all institutional rules that were in effect on the first day of July of that year, as well as a list of institutional rules repealed during the preceding year.

5.3.a. For each rule listed, the governing board shall identify the most recent date on which each rule was adopted, amended or repealed.

5.3.b. The list shall include a statement by the chair of the governing board certifying that the governing board complied with the provisions of West Virginia Code §18B-1-6 and this rule when each rule was adopted.

§133-4-6. Emergency Rules.

6.1. In the case of an emergency, a governing board of a non-exempted school may adopt, amend, or repeal a rule without first following the procedure set out in this rule. An exempted school's governing board shall include any such authority in its own rule on rules.

6.2. For the purpose of this section, an emergency exists when the adoption, amendment, or repeal of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare, or is necessary to comply with a time limitation established by state or federal law or regulation or a directive

or rule of the ~~West Virginia Higher Education Policy~~ Commission, or to prevent substantial harm to the public interest, or to deal with financial exigency. The facts constituting an emergency shall be communicated in writing in advance to the Chancellor, who shall disapprove the action of the governing board if the Chancellor, or his/her designee, disagrees that an emergency existed.

6.3. Any emergency rule shall remain in effect no longer than three (3) months and shall expire unless a final rule has been approved under the normal process set out in this rule.

§133-4-7. Administrative Procedures.

7.1. This rule contains no restrictions on the adoption, amendment or repeal of administrative procedures. A governing board, however, is free to impose restrictions on this process.

7.2. The institution shall post administrative procedures prominently at places where those subject to the administrative procedures are likely to see them.

§133-4-8. Enforceability.

8.1. Any institution rule that fits within the definition contained in Section 2.1 of this rule, but which has not previously been adopted by a formal vote of the governing board, must be adopted, amended or repealed by the governing board on or before July 1, 2006, or it shall be void and may not be enforced.

8.2. Any institution rule adopted, amended or repealed after the effective date of this rule in a manner inconsistent with the provisions of this rule shall be void and may not be enforced.

8.3. Any institution rule or policy statement not posted in a manner consistent with the provisions of this rule may not be enforced.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Candace Kraus

BACKGROUND:

At its meeting of June 22, 2018, the Commission approved revisions to Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents. House Bill 2815 enacted in 2017 removed authority of the Commission in approving the appointment and compensation of presidents at the exempted schools. In addition, the legislation removed the requirement that the Commission approve the appointment of a president at a non-exempt school and instead gives it the power only to confirm an appointment. Series 5, Legislative Rule, Guidelines for Governing Boards in Employing and Evaluating Presidents, is being modified to conform to these statutory changes.

During the thirty-day public comment period, the following comments were received:

Comment: The general nature of my comments regarding this proposed rule relate to WV open-meeting law of WV Code §6-9A and the WV Freedom-of-information-Act of WV Code §29B. These articles of code are fundamental to democratic governance and public sovereignty in West Virginia and must not be minimized, marginalized or preempted by this or any agency's rules. WV Code §18B describes requirements specific to Higher Education that work with but do not supersede the other two articles. It's (sic) word must not be interpreted to exclude higher ed institutions from following WV Code §6-9A or §29B.

Response: *Each comment provided has been analyzed and considered for amendment.*

Comment: The following are my suggested amendments to the proposed TITLE 133 Legislative Rule that will emphasize and better guide the BOG's to understand and comply with what is already required in state code, but has so often been neglected or misunderstood. Please consider these suggestions and implement them as seems best to you to best accommodate their intent. Further comments are interspersed throughout the proposed rule as needed and relevant to my suggested changes.

Response: Each comment provided has been analyzed and considered for amendment.

Comment: Recommends modifying §133-5-1 through §133-5-2.2.c to read as follows:

TITLE 133 LEGISLATIVE RULE

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 5 GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING PRESIDENTS

§133-5-1. General.

1.1. Scope - Rule establishing guidelines for governing boards of non-exempted schools to use in employing and evaluating presidents.

1.2. Authority - West Virginia Code "18B-1B-4, 18B-1B-6.

1.3. Filing Date – April 14, 2009

1.4. Effective Date – May 14, 2009

1.5. Repeal of former Rule – Repeals and replaces former rule dated May 14, 2009.

1.6. Other Applicable WV Code.

§29B; §6-9A

§133-5-2. State Colleges and Universities.

2.1. The provisions of this rule apply to the employment of presidents of Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College, and West Virginia State University.

2.2. Upon the occurrence of a vacancy in the position of President at one of the institutions set out in Section 2.1, the governing board of the institution shall undertake a search for a new President. The governing board is responsible for the search, both procedurally and financially. The governing board shall adopt a procedure, consistent with this rule and WV code, governing the search. The search procedure adopted by the governing board shall be approved by the West Virginia Higher Education Policy Commission ("Commission") prior to being implemented. The procedure shall require, at the least:

2.2.a. Input as to the best characteristics and qualities of the President should be solicited by the governing board of its constituencies and utilized in selecting and evaluating the candidates.

2.2.b. If a search committee is appointed, it shall include representation of faculty, students, and staff, and other constituencies of the institution. The number and constituency of the membership of the committee shall be at the discretion of the governing board.

2.2.c. A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and the means and time-frame for submitting applications, and distributed to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals for the purpose of advertising the position.

2.2.d. Instructions that all steps leading to the consideration of individual candidate applications, including but not limited to:

(1) determination of the need for the presidential search;

(2) solicitations for input from the constituents;

(3) the decision to search as a board or to appoint a search committee;

(4) determination of the make-up of the search committee;
(5) determination of the qualifications and characteristics of the new president;
(6) determination of means, details and time-frame for advertising and conducting the search;
(7) approval to file the qualifications, time-line and position advertisement with the HEPC
are “general personnel policy issues” and decisions according §6-9A-4.(b).(2).(B) that
must be made in open-meeting.

Response: The comments include provisions that are overly burdensome, overly prescriptive, redundant, and/or beyond the scope of the proposed rule. Additionally, the proposed rule provides for representation in the process by the constituent groups.

Comment: The WV Ethics Commission has, over the years, repeatedly ruled that the steps of employee searches that do not deal with the specific personal private information of a specific individuals meaning not dealing with specific applications or preliminary interviews, constitute general personal issue policies that must be handled in public according to §6-9A-4.(b).(2).(B). Specifying these steps and their nature as general personnel decisions will guide our BOG’s toward greater transparency and honesty in these searches.

Response: The comments are beyond the scope of the proposed rule.

Comment: The list of qualifications, the time-line, the job description and advertisement, etc. are public documents that the public has a right to observe being determined for readiness and merit and approved.

Response: The comments are beyond the scope of the proposed rule.

Comment: All determinations of general personnel policies in a presidential search are “decisions” under §6-9A-1(1) and §29A-1-4 and are required to be made in open meeting under §6-9A-3. For example, The BOG’s should be guided to share all their general personnel issues information with the public and constituents and make all general personnel determinations and other decision in open-meeting so the law and its purpose stated in §6-9A-1 can be better fulfilled.

Response: The comments are beyond the scope of the proposed rule.

Comment: Solicitation of input from constituents should be required rather than recommended. The BOG’s should not have an option of choosing to do it on their own without our input. That’s what the FSU BOG chose to do for their first attempt at the last presidential search back in 2016. They kept the need for a new president, their choice to conduct the search themselves, and the steps of the general personnel policy determinations secret, made in executive session and behind the scenes in private conversations and communications by individual board members. Let us not allow that to happen again, at any institution.

Response: The comments are beyond the scope of the proposed rule. Additionally, the proposed rule provides for participation in the process by representatives of the constituent groups.

Comment: Recommends modifying §133-5-2.2.d through §133-5-2.8 to read as follows:
2.2.d e. Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates, and their comments shall be solicited and evaluated by the governing board.

2.2.e f. Background checks may be conducted on each candidate prior to interviewing with the search committee or governing board. Background checks should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall be conducted prior to any final selection by the search committee or the governing board. On-site visits to the candidates' current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in conducting background checks and, at a minimum, shall include confirmation of degrees and past employment and criminal and credit checks.

2.3. Candidates may be considered through their own application or by nomination.

2.4. Members of the governing board, or any search committee appointed, may not provide information about the names or backgrounds of any candidates, without their consent, to anyone who is not a member of the governing board or search committee, or authorized agents or staff as designated in the search procedures approved by the Commission. When candidates are invited to a preliminary interview with the search committee, they shall be notified of the conditions under which confidentiality may be waived as to background checks and that in the event that they are invited for a campus interview, their names and backgrounds shall be publicly released at the time they accept an invitation for a formal campus visit.

2.5. At the request of an institution, the Commission may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search.

2.6. The Chancellor shall serve as an ex officio, non-voting member on all search committees or bodies serving in that capacity during the search process. The Commission reserves the right to conduct independent interviews of one or more finalists. Prior to exercising such option, it shall give sufficient notice to the governing board so that any such interviews will occur sufficiently close to the final decision of the governing board. All presidential appointments must be confirmed by the Commission.

2.7. Terms of compensation and contracts discussed with or offered to candidates shall be consistent with the sections of this rule regarding presidential compensation and contracts.

2.8. The search for an Interim President must also follow WV Code regarding openness and public records. All aspects of the search that do not involve the specific private information of Individuals being considered, including qualifications, time-line, job

description, hiring of a search firm and advertising, must be handled in open meeting. Interim Presidents appointed by a governing board shall be confirmed by the Commission. BOG's continue to abuse the lack of explicit requirement statements regarding the hiring of interim presidents. This process needs to become as open as the full presidential search.

Response: *The comments are beyond the scope of the proposed rule.*

Comment: Recommends inserting a new §133-5-2.9 to read as follows:

2.9 The Commission has authority under §18B-1B-4(c)(1) to object to a governing board's search procedures or actions when they are found to be in violation of WV code such as §29B; §6-9A, and may temporarily suspend a governing board's rule-making or other authority in order to bring the governing board into compliance with WV state law and reestablish sound, responsible institutional governance. This rule should remind BOG's of the authority and power the HEPC has to ensure that they follow the law. Certain institutions may be exempt from certain steps or requirements of the HEPC in their presidential searches, but they cannot be exempt for the fundamental laws of openness, rule-making and public service. The HEPC remains authorized to hold all BOG's accountable for their actions in following or violating the laws of West Virginia.

Response: *The comments are beyond the scope of the proposed rule.*

These comments were not relevant to the content of the rule and therefore no additional revisions to Series 5 were made.

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 5
GUIDELINES FOR GOVERNING BOARDS IN EMPLOYING AND EVALUATING
PRESIDENTS

§133-5-1. General.

1.1. Scope - Rule establishing guidelines for governing boards of non-exempted schools to use in employing and evaluating presidents.

1.2. Authority - West Virginia Code ' ' 18B-1B-4, 18B-1B-6.

1.3. Filing Date – ~~April 14, 2009~~

1.4. Effective Date – ~~May 14, 2009~~

1.5. Repeal of former Rule – Repeals and replaces former rule dated ~~July 14, 2005~~ May 14, 2009.

§133-5-2. State Colleges and Universities.

2.1. The provisions of this rule apply to the employment of presidents of Bluefield State College, Concord University, Fairmont State University, Glenville State College, ~~Marshall University~~, Shepherd University, West Liberty ~~State College~~ University, ~~West Virginia School of Osteopathic Medicine~~, and West Virginia State University ~~and West Virginia University~~.

2.2. Upon the occurrence of a vacancy in the position of President at one of the institutions set out in Section 2.1, the governing board of the institution shall undertake a search for a new President. The governing board is responsible for the search, both procedurally and financially. The governing board shall adopt a procedure, consistent with this rule, governing the search. The search procedure adopted by the governing board shall be approved by the West Virginia Higher Education Policy Commission ("Commission") prior to being implemented. The procedure shall require, at the least:

2.2.4a. Input as to the best characteristics and qualities of the President should be solicited by the governing board of its constituencies and utilized in selecting and evaluating the candidates.

2.2.2b. If a search committee is appointed, it shall include representation of faculty, students, and staff, and other constituencies of the institution. The number and constituency of the membership of the committee shall be at the discretion of the governing board.

2.2.3c. A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and distributed to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals for the purpose

of advertising the position.

2.2.4d. Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates, and their comments shall be solicited and evaluated by the governing board.

2.2.5e. Background checks may be conducted on each candidate prior to interviewing with the search committee or governing board. Background checks should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall be conducted prior to any final selection by the search committee or the governing board. On-site visits to the candidates' current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in conducting background checks and, at a minimum, shall include confirmation of degrees and past employment-and criminal and credit checks.

2.3. Candidates may be considered through their own application or by nomination.

2.4. Members of the governing board, or any search committee appointed, may not provide information about the names or backgrounds of any candidates, without their consent, to anyone who is not a member of the governing board or search committee, or authorized agents or staff as designated in the search procedures approved by the Commission. When candidates are invited to a preliminary interview with the search committee, they shall be notified of the conditions under which confidentiality may be waived as to background checks and that in the event that they are invited for a campus interview, their names and backgrounds shall be publicly released at the time they accept an invitation for a formal campus visit.

2.5. At the request of an institution, the Commission may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search.

2.6. The Chancellor shall serve as an ex officio, non-voting member on all search committees or bodies serving in that capacity during the search process. The Commission reserves the right to conduct independent interviews of one or more finalists. Prior to exercising such option, it shall give sufficient notice to the governing board so that any such interviews will occur sufficiently close to the final decision of the governing board. All presidential appointments ~~shall~~ must be ~~approved~~ confirmed by the Commission.

2.7. Terms of compensation and contracts discussed with or offered to candidates shall be consistent with the sections of this rule regarding presidential compensation and contracts.

2.8. Interim Presidents appointed by a governing board shall be ~~approved~~ confirmed by the Commission.

§133-5-3. Presidential Contracts.

3.1. Governing boards under the jurisdiction of the Commission shall receive the approval of the Commission of the total compensation package from all sources for a President when the President is initially hired and for any subsequent changes in the total compensation package.

3.2. A President is considered as will and pleasure employee of his/her governing board unless that status is specifically altered by the President's letter of appointment or contract. Presidential contracts exceeding a term of one fiscal year shall conform to the following:

3.2.4a. An initial offer of employment as President, or guarantee of employment in that or another position, may not exceed two years. After the initial contract, the governing board may offer contracts of up to five years. A President assigned to an alternative position during a guaranteed term of employment shall perform substantive duties on behalf of the institution in order to collect his or her salary.

3.2.2b. All contracts with a term greater than one fiscal year shall be conditioned upon availability of funding.

3.2.3c. A governing board may agree to reasonable notice of the intent not to renew a contract. It is recommended that such notice not exceed one year but may be increased up to two years after five years of service by the President.

3.2.4d. All contracts with a commitment of continued employment must provide that the President may be discharged for "cause" and that such a discharge nullifies any commitment to continued employment. "Cause" includes, but is not limited to, official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, misfeasance, insubordination, and acts of commission or omission in violation of the governing board's directives or policies.

3.3.5e. Provisions in contracts existing on the effective date of this rule that are inconsistent with this rule may remain in effect at the discretion of the governing board unless the provisions are in violation of the statute.

§133-5-4. Compensation.

4.1. The total compensation of a President, from all sources, shall receive prior approval of the Commission. Forms of compensation which require prior approval include: annual salary derived from whatever funding source, deferred compensation, and housing or vehicle allowances. The governing board may require approval of other compensation such as non-state funded discretionary funds, compensation from other employment or for service on a corporate board of directors, and payment of dues or assessments for membership in non-professional related clubs or associations. Any such compensation received shall be reported to the Chancellor. If approval of deferred compensation is being sought, the institution shall submit an actuarial report to the Commission detailing the present cash value of the deferred compensation and conditions for eligibility or receipt of the deferred compensation.

4.2. The total salary from all funding sources for a President should be based on a comparison of the presidential salaries at the institution's peer institutions, ~~as defined by the Commission. Other or other~~ national data sources which may be utilized by the governing board, as appropriate, to establish salary

ranges.

4.3. A percentage presidential salary increase in excess of the average percentage salary increase for all personnel at that institution within the last calendar year may be approved only if a detailed rationale of its governing board justifying the increase is submitted to the Commission.

4.4. Housing allowances granted a President not provided housing by the institution may not be considered as part of the presidential salary for the purposes of Section 4.2 above.

4.5. Annually, the Chancellor shall make available to the governing boards and Commission the most recent College and University Professional Association for Human Resources (CUPA-HR) or other comparable salary data applicable to their institutions.

4.6. The Commission must receive notice, but need not approve or confirm an increase in the compensation of a President that is exactly in the ratio of compensation increases allocated to all institutional employees if approved by the governing board.

§133-5-5. Presidential Evaluation.

5.1. Each governing board shall conduct a formal and structured written performance evaluation of the institution's President every third year of the President's employment. The President's performance shall be evaluated in relation to the duties and responsibilities assigned the President by the governing board, the success of the institution in meeting each requirement of its institutional compact, and any other criteria previously established by the governing board.

5.2. The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel-including faculty and staff as well as students, and persons who are knowledgeable of higher education matters ~~who are not otherwise directly employed by a governing board~~ to assist in its evaluation of the President.

5.3. The governing board committee, visiting team, or other body chosen by the governing board, shall visit the campus to receive the views of the President, governing board members, administrators, faculty, classified employees, non-classified employees, students, alumni, and community leaders. A schedule of interviews, meetings, and open forums that will assure a careful assessment of leadership and condition of the campus shall be arranged.

5.4. The governing board shall use the report of its committee, visiting team, or other body chosen by the governing board to assist in its own written evaluation of the President. The governing board's evaluation shall be reported to the President of the institution, the Chancellor, and the Chair of the Commission.

5.5. The Chancellor shall provide the governing boards, upon request, with evaluative tools, guidelines, and procedures recommended for the assessment and evaluation of college and university presidents and provide any assistance requested by a governing board in performing the evaluations set out in this rule.

5.6. The governing board shall conduct a written evaluation at the end of the initial contract period. In addition to the formal and structured evaluation every three years and at the end of the initial contract period, each President shall receive a written yearly evaluation in a manner and form decided by the governing board.

5.7. The Commission shall not approve any request for an increase in compensation of a President prior to receiving an evaluation of that President for the year immediately preceding the requested increase.

**West Virginia Higher Education Policy Commission
Meeting of August 24, 2018**

ITEM: Series 59, Procedural Rule, Awarding Undergraduate College Credit for Prior Learning, Advanced Placement Credit, and College-Level Examination Program

INSTITUTIONS: All

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Corley Dennison

BACKGROUND:

At its meeting of June 22, 2018, the Commission approved revisions to Series 59, Procedural Rule, Awarding Undergraduate College Credit for Prior Learning, Advanced Placement Credit, and College-Level Examination Program. During the thirty-day public comment period, the following comments were received:

Comment: In 133-59-5.8.a, we ask that you change 60 credits to 90 credits for bachelor's degrees, and 30 credits to 45 credits for associate's degrees, so as to be consistent with HLC. It would read: *"Institutions may set a higher limit not to exceed 90 credits for bachelor's degrees, not to exceed 45 credits for associate's degrees, and not to exceed 15 credits for certificate programs."* For reference, here is HLC's policy. Policy Title: Assumed Practices, Number:CRRT.B.10.020, B. Teaching and Learning: Quality, Resources, and Support, 1.b.The institution maintains structures or practices that ensure the coherence and quality of the programs for which it awards a degree. Typically institutions will require that at minimum 30 of the 120 credits earned for the bachelor's degree and 15 of the 60 credits for the associate's degree be credits earned at the institution itself, through arrangements with other accredited institutions, or through contractual relationships approved by the Commission. Any variation from the typical minima must be explained and justified.

Response: *With regard to the request to be in line with Higher Learning Commission (HLC) policy, the upper limits for allowable credits under Prior Learning be expanded to 90 from 60 credit hours for a bachelor's and 45 credit hours for an associate's, the staff has concluded the current wording is already compliant with HLC practices. HLC Assumed Practices Number: CRRT.B.10.020, Section B, part g reads, "The institution has a clear policy on the maximum allowable credit for prior learning as a reasonable portion of the credits required to complete the student's program."*

While the 90 hours refers to overall transfer credits, Series 59 references only

credits allowed under the prior learning policy and not general transfer hours. Therefore, the maximum allowable hours currently written in Series 59 are compatible with HLC guidelines.

Comments: In 133-59-6.1, we ask that you include all schools located in West Virginia that are accredited by HLC. It would read: *“Credits earned through PLA will be transferable from one HLC-accredited college or university located in West Virginia to another HLC- accredited college or university located in West Virginia. Once on a student’s transcript, credits earned through prior learning shall be treated no differently than other credit coursework on a student’s transcript.”*

In 133-59-6.2, we ask the same here that you include all schools located in West Virginia that are accredited by HLC. It would read: *“PLA credit awarded at one HLC-accredited college or university located in West Virginia must be accepted as transfer credit toward the degree if the student transfers to another HLC-accredited college or university located in West Virginia.”*

Response: *State code prevents the suggested change in language regarding the transfer of credit from one institution to another. The suggested change is “Credits earned through PLA will be transferable from one HLC accredited college....to another HLC accredited college....” However, West Virginia Code §18B-14-2, Transfer of Credit for Courses Completed, requires all institutions in West Virginia recognized as eligible for U.S. Department of Education Title IV funding to accept transfer credits from another Title IV approved West Virginia institution provided the course is 70 percent similar or the same.*

These comments were not relative to the content of the rule and therefore no additional revisions to Series 59 were made.

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

**SERIES 59
AWARDING UNDERGRADUATE COLLEGE CREDIT FOR PRIOR LEARNING, ADVANCED
PLACEMENT CREDIT, AND COLLEGE-LEVEL EXAMINATION PROGRAM**

§133-59-1. General.

1.1. Scope. -- This rule establishes guidelines for West Virginia public colleges and universities for the awarding of college credit for prior college-level learning through prior learning assessment, for acceptance of advanced placement credit, and awarding of credit for the College-Level Examination Program.

1.2. Authority.--West Virginia Code §§18B-1-1A, 18B-1-6, 18B-1B-4, 18B-2A-4.

1.3. Filing Date.--~~October 5, 2015.~~

1.4. Effective Date.--~~November 5, 2015.~~

1.5. Repeals and replaces Title 133, Series 15 and Series 16.

§133-59-2. Purpose for Prior Learning Credit.

2.1. Legislative goals established for West Virginia state colleges and universities provide that higher education in West Virginia should contribute fully to the growth, development, and quality of life of the state and its citizens. This policy details the responsibilities of the state higher education institutions regarding the awarding of college credit for prior college-level learning gained outside the higher education academic environment.

2.2. The West Virginia Higher Education Policy Commission (Commission)/West Virginia Council for Community and Technical College Education (Council) recognizes that some students, particularly adults and non-traditional students, may have acquired prior college-level learning through the development of skills or knowledge that closely parallel those outcomes taught in college-level courses. It is important that colleges and universities have the opportunity to evaluate learning that has taken place outside the higher education academic environment and to award academic credit when appropriate.

2.3. The purpose of this rule is to outline the terms and conditions under which West Virginia public colleges and universities award and/or transfer credits toward a degree or certificate based upon Prior Learning Assessment (PLA) and to provide consistent and accessible methods for students to earn these credits.

2.4. It is the intent of the Commission/Council to permit the awarding of undergraduate academic credit for prior learning through a variety of assessment methodologies that will ensure the academic credibility of such credit. Under these guidelines, in accordance with institutional policies and procedures,

each institution shall award academic credit for prior learning that is equivalent to coursework which satisfies the requirements for the degree program in which the student is enrolled.

2.5. The Board of Governors Associate of Applied Science degree program and the Regents Bachelor of Arts degree program maintain specific guidelines and requirements for the use of credit for prior learning. This policy does not replace existing guidelines.

§133-59-3. Definitions.

3.1. Prior Learning Assessment (PLA) is defined as the assessment of college-level learning for college credit gained outside the higher education academic environment. For example, individuals may acquire college-level knowledge or skills through work, employee training programs, military service, independent study, non-credit courses, or community service. Only documented and demonstrated college-level learning will be awarded college credit.

3.2. In support of providing opportunities for students to earn college-level credit for college-level learning that has been acquired outside the higher education academic environment, the assessment of prior college-level learning can be accomplished through a variety of assessment methods including, but not limited to the following:

3.2.a. Advanced Placement Exams

3.2.b. American Council on Education (ACE) Guides

3.2.c. College Level Examination Program (CLEP) Exams

3.2.d. DANTES Subject Standardized Test (DSST)

3.2.e. Excelsior College Examination Program (ECE)

3.2.f. Institutional Course Challenge Examination Credit

3.2.g. International Baccalaureate Program (IB)

3.2.h. Institutional Evaluation of Industry and Workforce Training such as apprenticeships, certifications, and licensure

3.2.i. Portfolio Assessment/Review Credit

3.2.j. Prior Military Training Credit

§133-59-4. Principles.

4.1. West Virginia public colleges and universities value the diversity of their students. This diversity includes the unique experiences, interests, and intellectual pursuits that may lead to the acquisition of college-level learning. The acquisition of college-level learning is validated by assessment methods that are academically sound and rigorous.

4.2. West Virginia public colleges and universities shall employ prior learning assessment aligned with their respective missions, the principles of academic integrity, resources, and student educational attainment and success.

§133-59-5. Institutional Policies Regarding Awarding Credit for Prior Learning.

5.1. State colleges and universities shall develop institutional policies for evaluating prior learning and for awarding credit consistent with this policy.

5.1.a. Each institution shall develop appropriate policies and procedures for awarding credit for a student's prior college-level learning in accordance with this policy, accrediting bodies' guidelines for prior learning assessment, and principles of good educational practice.

5.1.b. Institutional policy will apply to all academic programs.

5.1.c. The institutional policy on Credit for Prior Learning must be filed with the Council for Community and Technical College Education and the Higher Education Policy Commission.

5.2. Institutions shall identify the forms of PLA credits that the institution will award, the processes for acquiring such credit, and make that information publicly available to students, faculty, and other stakeholders.

5.3. Institutions shall have discretionary authority to award academic credit for prior learning that is equivalent to coursework which meets the requirements for the degree program in which the student is enrolled.

5.4. Credit for prior learning can apply toward majors, minors, general education requirements, and electives that count toward the student's chosen degree or certificate. Prior Learning Assessment credit may also satisfy prerequisite requirements. College credit awarded through PLA shall not be treated differently in its application and use than its course equivalencies or appropriate block credit.

5.5. Credit for prior learning shall only be awarded to students who are admitted to the institution and have declared a major field of study.

5.6. Credit awarded through PLA shall not count toward institutional residency requirements.

5.7. The evaluation of a portfolio must be completed by faculty with appropriate professional credentials. Course-specific examinations must be designed and evaluated by faculty with appropriate professional credentials. A recommendation for credit shall be made to the appropriate academic officer at the institution and in accordance with the institution's PLA guidelines.

5.8. Institutions must accept PLA credit up to 30 credits for bachelor's degrees, up to 15 credits for associate's degrees, and up to 6 credits for certificate programs.

5.8.a. Institutions may set a higher limit not to exceed 60 credits for bachelor's degrees, not to exceed 30 credits for associate's degrees, and not to exceed 15 credits for certificate programs.

5.8.b. If a program accrediting body has a specific maximum for PLA credit, then that maximum should be honored by that particular program.

5.9. Credit awarded through Prior Learning Assessment must be clearly identified as such on a student's official transcript according to institutional PLA guidelines, but it should be evident that the credits are PLA. Such credit shall not be used to determine a student's grade point average or used in the calculation of graduation honors. The credit should be recorded as "Credit" only.

5.10. Student requests for awards of academic credit for prior learning shall be submitted in accordance with the guidelines established by the institution. Institutions must establish a written record of their decisions and the basis for that decision in accepting or declining a Prior Learning Assessment (whether it is portfolio evaluation or other type of assessment) for academic credit. Institutional policies should ensure the transparency of the award or denial of PLA credit. Additionally, institutions must develop and communicate a process for appealing PLA decisions.

5.11. Prior Learning Assessment fees may vary based upon the type of assessment performed. Prior Learning Assessment credit and transcribing fees to students must be clearly published and made available to the student.

5.12. Institutions will regularly review their PLA policies to ensure that they are consistent with accreditation PLA guidelines and state, regional, and national practices.

§133-59-6. Transferability of Prior Learning Assessment Credits.

6.1. Credits earned through PLA will be transferable in accordance with Series 17: *Transferability of Credits and Grades at West Virginia Colleges and Universities*. Once on a student's transcript, credits earned through prior learning shall be treated no differently than other credit coursework on a student's transcript.

6.2. PLA credit awarded at one institution, which meets the West Virginia Core Coursework Transfer Agreement or other statewide articulation agreements, must be accepted as transfer credit toward the degree if the student transfers to another West Virginia public college or university in accordance with the guidelines of that particular policy or agreement.

§133-59-7. Reporting the Awarding of Prior Learning Assessment Credits.

7.1. Each institution shall maintain records of the number of students awarded credit for prior learning, number of credits for prior learning awarded, type of assessment method(s) used, and other recipient data, which will be reported to the Higher Education Policy Commission/Council for Community and Technical College Education on an annual basis. Commission/Council staff will develop specific reporting guidelines and advise each institution of those guidelines.

§133-59-8. Policy for Acceptance of Advanced Placement Credit.

8.1. West Virginia state colleges and universities shall accept advanced placement credits according to the following guidelines:

8.1.a. High school students completing advanced placement examinations of the College Board with a minimum score of 3 will receive credit at any state college or university, as indicated in the list of advanced placement exams offered by the College Board. The Central Office of the Higher Education Policy Commission maintains a list of all College Board advanced placement exams and the minimum number of credits that each institution shall grant. Credit is to be awarded solely on the basis of satisfactory performance of a score of 3 or higher on the advanced placement examinations.

8.1.b. When the examination is in the area of the student's major, the institution will award credit toward the major or the core curriculum.

8.1.c. An academic department within the institution may, upon approval of the institutional faculty, require a higher score than 3 on an advanced placement test if the credit is to be used toward meeting a course requirement for a major in the department.

8.1.d. Credits awarded by regionally or nationally accredited institutions of higher education in West Virginia for successful completion of advanced placement exams are transferable to West Virginia state colleges and universities in accordance with the advanced placement policy of the receiving institution.

§133-59-9. Institutional Responsibility.

9.1. Each institution shall develop guidelines for acceptance of advanced placement credits that are consistent with the provisions of this rule and publish the guidelines in the college or university bulletin and/or other appropriate institutional publications.

§133-59-10. Policy for the College-Level Examination Program.

10.1. This policy shall serve as a rule for the College-Level Examination Program (CLEP) of the College Entrance Examination Board in West Virginia state colleges and universities. Credit awarded by an institution in conformity with this policy shall be transferable to all West Virginia state colleges and universities. Further, credit shall be awarded only once to recognize mastery of course content. Credit shall not be awarded for equivalent courses in which students have already earned such credit through course work, CLEP, institutional challenge examinations, life experience, or other mechanisms.

§133-59-11. Subject CLEP Examinations.

11.1. Students may be awarded credit for the successful completion of any or all of the CLEP Subject Examinations presently offered or developed in the future. They must achieve a score equal to or above the required score of the Commission on Educational Credit and Credentials of the American Council on Education for CLEP Exams current at the time the examination was taken. Credit shall be awarded in an amount not exceeding the number of semesters for which the examination was designed. A grade shall not be assigned, and the credit will not be included in the computation of the student's grade-point average. The institution shall equate the CLEP credit earned with existing course offerings. If no equivalent course is offered by the institution, the credit earned by CLEP examination shall be considered elective credit. Students shall not receive CLEP Subject Examination credit for equivalent courses in which they have already earned credit.

§133-59-12. General CLEP Examinations.

12.1. As of the effective date of this policy, an institution may award credit within the limits of the most recent recommended CLEP scores posted by The College Board. At the time of this rule, The College Board chart is found at the following URL: located at <https://clep.collegeboard.org/pdf/what-your-score-means.pdf>.

12.2. It should be made clear to students that such credit in general education may not meet specific program requirements of the institution awarding the credit or of other institutions to which the student may later transfer. The credit shall then be used as elective credit. Students shall not receive CLEP General Examination credit for equivalent courses in which they have already earned credit.

12.3. An institution awarding credit through CLEP may establish scores higher than specified above for Subject and General Examinations if it is established that the higher scores equate to a satisfactory level of performance by students actually enrolled in the equivalent course(s) at that institution.

§133-59-13. Academic Record.

13.1. The permanent academic record of the student shall indicate which credit was earned by CLEP examination.

§133-59-14. Enrollment.

14.1. Students must be enrolled in an institution in order to receive credit from the institution. Students who have taken CLEP examinations prior to enrollment must submit an official CLEP transcript.