

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

March 11, 2021 | 10:00 a.m. | By Zoom Conference

1-646-558-8656 and enter meeting ID 985 0035 2819

AGENDA

- I. Call to Order**
- II. Approval of Fiscal Year 2022 Distribution Plan for the West Virginia Higher Education Grant Program**
- III. Approval of Eligibility Requirements, Annual Award Amount, Summer Awards, Modification to National Testing Requirement for the PROMISE Scholarship Program, and Extension of the PROMISE Scholarship Deadline.**
- IV. Approval of Revisions to Series 64, Legislative Rule, Administrative Exemption**
- V. Approval of Appointments to the West Virginia Regional Technology Park Board of Directors**
- VI. Additional Board Action and Comment**
- VII. Adjournment**

**West Virginia Higher Education Policy Commission
Meeting of March 11, 2021**

ITEM: Approval of Fiscal Year 2022 Distribution Plan for the West Virginia Higher Education Grant Program

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed Fiscal Year 2022 Distribution Plan for the West Virginia Higher Education Grant.

STAFF MEMBER: Tana Pendell

BACKGROUND:

The West Virginia Higher Education Grant Program, the state's long-standing need-based financial aid program, provides opportunities for full-time, undergraduate students with demonstrated financial need to pursue a postsecondary education at qualified institutions. Modifications to Series 42, the legislative rule that regulates the program, have provided staff with policy latitude to determine award distribution frameworks.

Financial aid has been increased through a commitment from the Governor, the Legislature, and the Commission so that higher education can be affordable for West Virginia students. The following provides an overview of the proposed distribution plan for the 2021-22 academic year.

Revenue

The Higher Education Grant Program receives funding from general revenue and carry forward balances. Fiscal Year (FY) 2021 funding, not including carry forward, should total just over \$40.6 million:

- *State Appropriation - \$40,619,864.* The Legislature appropriates funds annually directly to the Higher Education Grant Program. The estimated FY 2022 appropriation is the same as the FY 2021 appropriation.

Based upon current projections, funding may be used to increase the award amount for the 2021-22 award year.

Proposed FY 2022 Higher Education Grant Program Funding Summary

	Budget Presented to Student Financial Aid Advisory Board
State Appropriations	\$40,619,864
3% Administrative Allowance	(\$1,218,596)
Estimated Carry Forward	\$7,543,417
Total	\$46,944,685

The Higher Education Student Financial Aid Advisory Board proposes to increase the award amount during the 2021-22 year to \$3,000 up to a 12,000 EFC and have one award level in order to simplify the award process for institutions and students. The maximum award amount for 2020-21 is \$2,900.

Non-Traditional Students (adults over the age of 25).

Application deadlines that occur well before the beginning of an academic year negatively impact the participation rate of non-traditional students, especially since a deadline is not part of the federal financial aid application process. To provide greater programmatic access and to increase adult college participation rates, the Advisory Board proposes for the 2021-22 academic year a priority application date of July 1, 2021 for:

- 1) students 25 years of age or older,
- 2) students who have not previously received the Higher Education Grant, and
- 3) have an EFC under 12,000.

Staff proposes a secondary application deadline of July 31, 2021 for the late filing non – traditional population if funding allows, to better utilize the funding that is set aside for this subgroup.

**West Virginia Higher Education Policy Commission
Meeting of March 11, 2021**

ITEM: Approval of Eligibility Requirements, Annual Award Amount, Summer Awards, Modification to National Testing Requirement for the PROMISE Scholarship Program, and Extension of the PROMISE Scholarship Deadline.

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves proposed eligibility requirements, the annual award amount, summer awards, modification to national testing requirement for the PROMISE Scholarship Program, and extension of the PROMISE Scholarship deadline.

STAFF MEMBER: Tana Pendell

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.

Eligibility Requirements

The current scholarship eligibility requirements for high school and homeschooled applicants 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) or a 1100 SAT combined score with a 530 score in evidenced based reading and writing and a 520 score in mathematics.

Eligibility requirements for those attending an approved alternative education program must meet the academic eligibility criteria above and average a 550 on each section of the TASC.

Eligibility requirements for those attending an out-of-state high school but reside in West Virginia must meet the academic eligibility criteria above and the high school must verify that the student commuted on a daily basis from West Virginia the entire time the student attended the out-of-state high school.

Staff proposes maintaining these eligibility standards for students applying to receive the scholarship for the first time in the 2022-2023 academic year.

Annual Award Amount

Due to the current budget projections, staff proposes to maintain the award level for the 2021-22 academic year at the lesser of tuition and mandatory fees, or \$4,750 annually. Staff also recommends that the Higher Education Student Financial Aid Advisory Board continue to closely monitor the program. Staff encourages that these options not be limited merely to changing qualification criteria but also include other policy changes that may help the PROMISE program work to further other financial aid and educational goals of the state.

Summer Awards

The PROMISE Scholarship Program provides summer school awards for eligible students. Summer awards were initially offered during Summer 2010. Student acceptance of a summer award counts toward the maximum eight semesters of eligibility with priority given to students who can utilize the summer term to graduate by year's end. Below is a chart on PROMISE awarded in the summer. Staff proposes to continue summer PROMISE awards based upon available funding.

Year	Recipients	Average Award	Total Awards
2016	99	\$2,128	\$210,658
2017	99	\$2,019	\$199,853
2018	130	\$2,128	\$276,625
2019	139	\$2,106	\$292,697
2020	152	\$2,056	\$312,473

Modification to National Testing Requirement

Students have had difficulty being able to take a national ACT and SAT tests because of the state of emergency. The ACT residual test is the same as an ACT test that is taken on a national test date but is proctored and scored by administrators at an institution. Staff recommends having the ability to accept a residual test score provided directly by an institution instead of a national test score during the state of emergency for a student to qualify for the PROMISE Scholarship for the Class of 2021.

Extension of PROMISE deadline

Staff recommends extension of the application deadline for the PROMISE Scholarship to July 1, 2021. Students applying for a Fall 2021 PROMISE Scholarship award would have until July 1, 2021 to complete both the PROMISE application and the FAFSA. It has been difficult getting high school seniors in a post-pandemic mindset and without in-person outreach it has been difficult to provide students with the information and help they need to navigate the financial aid process.

**West Virginia Higher Education Policy Commission
Meeting of March 11, 2021**

ITEM: Approval of Revisions to Series 64, Legislative Rule, Administrative Exemption

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the revisions to Series 64, Legislative Rule, Administrative Exemption, to be filed with the Secretary of State and the Legislative Oversight Commission on Education Accountability for further legislative action.

STAFF MEMBER: Matt Turner

BACKGROUND:

At its meeting of November 20, 2020, the Commission approved Series 64, Legislative Rule, Administrative Exemption, to be filed with the Secretary of State for the formal thirty-day comment period. During the 2020 Legislative Session, Senate Bill 760 was passed which allows the public baccalaureate institutions to apply to the Commission for designation as “administratively exempt” from oversight by the Commission and creates a matrix for the institutions and the Commission to follow to determine eligibility for such exemption.

During the thirty-day public comment period, the following comments were received from the Advisory Council of Classified Employees (ACCE):

Comment: Regarding the 5 year sunset rule: The ACCE would like clarification of what happens should the rule not be extended or replaced at the end of the 5 year sunset period.

Response: *West Virginia Code § 29A-3A-20 mandates that all rules promulgated or amended after April 1, 2016 contain a sunset provision terminating the rule after five years. If the Legislature declines to renew the rule upon its sunset date, the rule would terminate and no longer be of any force or effect.*

Comment: While we understand that the rule’s sections on definitions is taken straight from the language in the original legislation, the rule should clarify that an administratively exempted school is not just one that meets at least 3 of 5 criteria but one that has also requested and been approved for exempted status through the

processes outlined in the rule. Meeting the criteria is not enough to be officially exempted.

Response: *Subsection 3.1 of the rule clearly states that colleges or universities must apply to the Commission for designation as an administratively exempt school. This language is lifted directly from the authorizing statute at W. Va. Code § 18B-1-1f(c). Therefore, the rule is sufficiently clear that a college or university that wishes to become administratively exempt must apply to the Commission for such designation.*

Comment: The rule identifies that if a school is approved based on meeting 3 criteria and upon review, the school no longer meets one of the original criteria but meets a different criterion, the status will remain as exempted. We recommend clarifying that if a school no longer meets one or more of the original criteria but still meets a total of at least 3, the school would retain the exempt status. It is possible for a school to no longer meet up to 2 of the original criteria while still meeting 3 criteria overall.

Response: *The language of Subsection 5.2 has been amended to clarify that if an institution has failed to meet one or more criteria by which it initially qualified for administrative exemption status, but that it also now meets one or more of the other criteria, it will be allowed to maintain its administratively exempt status.*

Comment: The language of the rule sounds as if only the original criteria submitted for approval will be checked during the annual review, and the remaining criteria will only be reviewed if one or more of the original criteria are no longer met. The ACCE recommends that the rule be clear that all approved schools will have all 5 criteria evaluated on a yearly basis.

Response: *The language of Subsection 5.1 has been amended to clarify that Commission staff will review all statutory criteria annually to determine whether an institution meets the requirements of administrative exemption.*

Comment: The rule indicates that schools applying for exempt status will provide their own data up front to show they meet at least 3 criteria. The rule should make clear that the HEPC will do their own review of the criteria for the applying school to ensure the school's data is accurate. Schools measure and report data differently, so it must be required that the HEPC validate the data up front prior to granting exempt status.

Response: *The language of subsection 3.2 has been amended to clarify that the Commission verifies the data submitted by the institutions before it grants administrative exemption status.*

Comment: The rule should identify who from the college or university can apply for exemption based on meeting the criteria. The rule identifies that for special

circumstances, the board of governors makes the request, and the same should be spelled out for applying based on criteria as well.

Response: *The language of Subsection 3.1 has been amended to state that the governing board of an institution must submit a letter to the Commission requesting administratively exempt status.*

Comment: If an approved school no longer meets 3 criteria upon annual review, can they apply for exemption status based on special circumstances during the 1 year grace period? Or must they complete the 1 year grace period, have their exempt status revoked, and then submit a new application for exemption based on special circumstances?

Response: *An institution no longer meeting three of the five statutory criteria must use its one-year grace period to try to regain the statutory standards. If the school cannot accomplish that, the Commission would have to withdraw its administrative exemption status, and the school would have to re-apply based on special circumstances.*

Comment: At the end of a school's 1 year grace period for not meeting at least 3 criteria, can the Commission vote to extend the grace period or otherwise approve them for exempt status based on mitigating or special circumstances?

Response: *There is no authorization in the statute for the Commission to extend the grace period, and the rule does not propose to extend the grace period.*

Comment: If a school applies for exemption based on special circumstances, the rule indicates a vote will occur to revoke exemption status if the special circumstances no longer exist, but it does not indicate how often the special circumstances will be reviewed. What will this review process be like and how often will it be conducted?

Response: *The review process for schools exempt based on special circumstances would be the same as the review process for the schools exempt based on statutory criteria. The language in subsection 5.1 has been amended to clarify that either the statutory criteria or the special circumstances will be reviewed annually, and the language in subsection 6.1 has been amended to clarify that the special circumstances will also be reviewed annually.*

Comment: The ACCE recommends small changes in language to the following sections:

6.1. Revoking Administratively Exempt School Status. – Upon the annual review, for those institutions that do not meet three of the five requirements for administratively exempt school status, the Chancellor will notify the President of ~~the~~ each institution

that they no longer meet the requirements for the designation and that the institution has one year to meet the requirements again.

6.1.a. Upon the second consecutive annual review where institutions ~~that~~ do not meet three of the five requirements for exempt status, the Chancellor will notify the President that the institution no longer is eligible and that the Commission will vote to revoke administratively exempt status in no less than 30 days.

Response: *The Commission does not agree that this language needs to be changed and will leave it as currently drafted.*

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

ADMINISTRATIVE EXEMPTION

SERIES 64

§133-64-1. General.

1.1. Scope and Purpose. – This legislative rule establishes the process by which the West Virginia Higher Education Policy Commission (Commission) will grant administrative exemption status to and remove administrative exemption status from the State’s baccalaureate institutions of higher education.

1.2. Authority. – West Virginia Code §18B-1-1f(c).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§133-64-2. Definitions.

2.1. “Administratively exempted schools” means state colleges and universities that achieve and maintain three of the five of the following:

2.1.a. Graduation rate: A three-year average graduation rate of not less than 45 percent;

2.1.b. Retention rate: A three-year average retention rate of not less than 60 percent;

2.1.c. Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

2.1.d. Days of cash reserved: A three-year average of not less than 50 days cash reserved;

2.1.e. Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university’s audited financial statements; or

2.1.f. Whose governing board requests a review by the chancellor of any special circumstances and the Commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

2.2. “Composite Financial Index” means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution’s financial health and inform decision-making processes;

2.3. “Credit headcount enrollment” means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

2.4. “Days of cash reserved” means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post-employment benefit and pension liability expenses;

2.5. “Graduation rates” means the proportion of first time in college students who obtain a bachelor’s degree within six years, as further defined by and reported to the Commission;

2.6. “Retention rates” means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year;

2.7. “State college and university” shall have the same meaning as provided in West Virginia Code §18B-1-2.

§133-64-3. Procedure for Requesting Status as an Administratively Exempt School.

3.1. Requesting Administratively Exempt Status. – Any State college or university may apply to the Commission for designation as an administratively exempt school by its governing board submitting a letter to the Chancellor requesting such status and setting forth which of the criteria established in West Virginia Code §18B-1-1f(b) and reiterated in subsection 2.1 above the college or university meets.

3.2. Reviewing Administratively Exempt School Status. – Upon receipt of a request for administrative exemption, the Commission shall verify that the requesting institution meets the statutory criteria using data submitted by the college or university to, and validated by, the Commission.

3.3. Institutions shall provide promptly upon request from the Commission or Chancellor any information to support the Commission’s review of the institution’s performance as an administratively exempt college or university.

§133-64-4. Procedure for Granting or Denying Status as an Administratively Exempt School.

4.1. Approval of Administratively Exempt School Status. – Upon verification that an institution meets three of the five requirements to be designated as an administratively exempt school, the Commission shall vote at its next regularly scheduled meeting whether to grant or deny such request.

§133-64-5. Procedure for Reviewing Administratively Exempt Status Once Granted.

5.1. Review of Administrative Exempt School Status Institutions. – Commission staff will review the requirements annually all criteria, either statutory or special circumstances, for administratively exempt school status for the administratively exempt institutions annually.

5.2. If, during its annual review, Commission staff determines that an administratively exempt school has failed to meet one or more of the criteria by which it initially qualified for administrative exemption status, but that it also now meets one or more of the other criteria that would allow it to maintain its administrative exemption, Commission staff will notify the institution that it is being allowed to maintain its administrative exemption status under the newly met criteria.

5.3. Each year, as part of the statutorily mandated annual reauthorization process established in 133 C.S.R. 52, *Annual Reauthorization of Degree Granting Institutions*, the reauthorization review committee shall determine whether administratively exempted institutions are meeting at least three of the exemption criteria specified in Section 2 of this rule.

5.3.a. Those administratively exempted institutions meeting three or more of the criteria in the review process shall be reported in the annual reauthorization resolution to the Commission as qualified to maintain administratively exempt status.

5.3.b. Those administratively exempt institutions that fail to meet at least three of the exemption criteria shall be reported in the annual reauthorization resolution to the Commission as failing to meet the requirements to maintain the administratively exempt status. The institution shall be formally notified of this finding by the process set forth in Section 76 below.

§133-64-6. Revoking Administratively Exempt School Status Procedure.

6.1. Revoking Administratively Exempt School Status. – Upon the annual review, institutions that do not meet three of the five requirements for administratively exempt school status, or whose special circumstances have changed, the Chancellor will notify the President of the institution that they no longer meet the requirements for the designation and that the institution has one year to meet the requirements again.

6.1.a. Upon the second consecutive annual review where institutions that do not meet three of the five requirements for exempt status, the Chancellor will notify the President that the institution no longer is eligible and that the Commission will vote to revoke administratively exempt status in no less than 30 days.

6.1.b. After 30 days have passed following the notification that an institution no longer meets three of the five requirements for exempt status, the Commission may vote to revoke the institution's administratively exempt status.

**West Virginia Higher Education Policy Commission
Meeting of March 11, 2021**

ITEM: Approval of Appointments to the West Virginia Regional Technology Park Board of Directors

INSTITUTION: West Virginia Regional Technology Park

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the appointments to the West Virginia Regional Technology Park Board of Directors.

STAFF MEMBER: Sarah Armstrong Tucker

BACKGROUND:

Appointments to the West Virginia Regional Technology Park Board of Directors are to be made by the Commission when terms have expired or vacancies exist on the Board. Currently, the terms of two members have expired and there is one vacancy.

It is recommended that the following individual be appointed to a vacant position for a term ending June 30, 2022:

- **J. Rudy Henley**, JRH Associates Inc. and MHLP, LLC

It is also recommended that the following individuals be reappointed to fulfill the terms of membership ending June 30, 2021:

- **Michael J. Farrell, Esquire**, Farrell, White and Legg PLLC
- **Diane Lewis Jackson**, Action Facilities Management, Inc.