

Legislative Oversight Commission on Education Accountability September 11, 2022

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WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Higher Education Policy Commission, Title 133,
Legislative Rule, Series 2, Higher Education Finance Policy**

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

**SERIES 2
~~HIGHER EDUCATION FINANCE POLICY~~ PERFORMANCE-BASED FUNDING FORMULA**

§133-2-1. General.

1.1. Scope. – This rule governs development, implementation, and administration of the performance-based funding formula for West Virginia public four-year colleges and universities.

1.2. Authority. – W. Va. § 18B-1B-4(a)(2).

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

1.6. Repeal and Replace. – This legislative rule repeals and replaces Title 133CSR2 filed June 7, 2001 and effective July 1, 2001.

§133-2-2. Purpose.

2.1. The purpose of this rule is to define the parameters governing the establishment and administration of a performance-based funding formula (funding formula or formula) to be used in the development of annual base budget requests, beginning with the 2024 fiscal year budget cycle, for Bluefield State University, Concord University, Fairmont State University, Glenville State University, Marshall University, Potomac State College of West Virginia University, Shepherd University, West Liberty University, West Virginia State University, West Virginia University, and West Virginia University Institute of Technology.

§133-2-3. Definitions.

3.1. “Academically Underprepared Student” means a West Virginia resident student, pursuing an associate or bachelor’s degree, who has at least one of the following risk factors:

3.1.1. Cumulative high school grade point average below 2.50; or

3.1.2. Admitted to the institution based on standardized test scores (ACT, SAT, or ACCUPLACER) that would qualify the student for developmental or remedial placement in mathematics or English based on placement criteria established by 133 C.S.R. 21, *Freshman Assessment and Placement Standards*.

3.2. “Adults or Adult Students” means West Virginia Resident students with an approximate age of 25 and older, calculated by subtracting the individual’s year of birth from the submission year for those data used in the calculation of model outcomes.

3.3. “Awards per 100 Full-Time Equivalent (FTE) Students” means the combined total number of unique students earning at least one associate or bachelor’s degree within an academic year for every 100

full-time equivalent (FTE) undergraduate degree-seeking students.

3.4. “Base Appropriation” means the amount of funding that an institution receives through a state appropriation for its operations and for which there are no significant restrictions on expenditure, and excluding funds appropriated specifically to support the schools of medicine, and related health sciences functions, at Marshall University and West Virginia University.

3.5. “Chancellor” means the Chancellor for Higher Education, as that term is defined by W. Va. Code § 18B-1B-5, or his or her designee.

3.6. “Classification of Instructional Programs (CIP) Code” means a numerical identifier assigned by the National Center for Education Statistics to an academic discipline to support tracking and reporting data at the field-of-study level.

3.7. “Commission” means the West Virginia Higher Education Policy Commission as established by W. Va. Code § 18B-1B-1, et seq.

3.8. “Degrees Awarded” means the combined total number of students earning associate degrees, bachelor’s degrees, master’s degrees, post-master’s certificates, doctoral degrees or law degrees during an academic year. Students earning multiple degrees within an academic year shall be counted as a single outcome for model calculations. In such cases, the outcome score will be calculated based on the degree that yields the institution the highest possible total score with all premium multipliers applied.

3.9. “Focus Population” means West Virginia resident students identified as academically underprepared, adults, and/or low-income based on the criteria defined by this Rule.

3.10. “Full-Time Equivalent (FTE) Student” is an enrollment metric calculated by dividing the total number of credit hours generated by an undergraduate degree-seeking student in credit-bearing classes during the summer, fall, and spring semesters of an academic year by 30.

3.11. “Higher Education Price Index (HEPI)” is an inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.

3.12. “Hold-Harmless Provision” means a safeguard in the funding formula designed to provide stability and predictability in the formula by preventing an institution’s outcomes-based funding allotment from decreasing by more than five percent (5%) from one academic year to the next.

3.13. “Low-Income Student” means a West Virginia resident student who, based on current and historical records, is identified as having received financial assistance through the Federal Pell Grant program for at least one semester at any State institution of higher education.

3.14. “On-Time Completion” refers to a graduate who completed a bachelor's degree within four academic years, based on the year and semester in which they were reported as a first-time freshman and the year and semester in which they were reported as completing a bachelor's degree. The bachelor's degree must be completed at the same institution at which the student was first identified as a first-time freshman.

3.15. “Premium” is a mathematical weighting factor applied to certain formula calculations for West Virginia resident students identified as belonging to one or more focus populations, to associate or bachelor’s degrees awarded in fields identified as State Priority Fields, and/or to bachelor’s degrees completed within four years, as defined in Section 3.14 of this rule.

3.16. “Progression Outcomes” means the number of full-time and part-time associate or bachelor’s degree-seeking students whose cumulative credits earned at the institution at the beginning of a semester are less than the established credit hour threshold benchmarks of 30, 60, or 90 student credit hours and whose cumulative credit hours earned at the end of the semester are equal to or greater than the credit hour threshold benchmarks during the academic year. Credits transferred in from other institutions are not included in the calculations.

3.17. “Research and Development Metrics” means the amount of funding expended on research and development activities as reported on the institution’s audited financial statement under the Operating Expenses category within both the natural and functional classifications.

3.18. “Residual Funds” means funding that is not obligated through formula calculations as a result of a decline from one year to the next in the total number of outcomes across all institutions.

3.19. “Scaling Factor” is a mathematically derived value used in formula calculations for the purpose of adjusting outcome values across different metrics to values of comparable magnitude.

3.20. “State Priority Programs” means associate degree or bachelor’s degree programs identified by the West Virginia Department of Commerce as being aligned with occupations in high or critical demand statewide.

3.21. “West Virginia Resident” or “Resident” means an individual enrolled at a public college or university with an in-state tuition and fee status as defined by 133 C.S.R. 25, *Residency Classification for Admission and Fee Purposes*.

§133-2-4. Formula Development, Implementation, and Administration.

4.1. The Chancellor shall develop, in consultation with the Funding Formula Advisory Committee, as defined in section 4.3 of this Rule, a funding formula for public four-year institutions that will serve as a broad framework for efforts to improve student outcomes and institutional efficiency. The Commission shall use the funding formula to determine the annual base budget request for each institution, beginning with the fiscal year 2024 budgeting cycle. The formula shall, at a minimum:

4.1.1. Apply to thirty percent (30%) of each institution’s base appropriation, referred to herein as the Outcomes-Based Funding Pool;

4.1.2. Set aside seventy percent (70%) of each institution’s base appropriation, referred to herein as the Base Operating Budget, which shall be exempt from outcomes-based funding calculations;

4.1.3. Hold institutions accountable for increasing the educational attainment levels of West Virginia citizens by addressing the State’s economic development and workforce needs and promoting increased degree production, with a particular emphasis on degrees awarded in academic programs aligned with State Priority Fields;

4.1.4. Acknowledge the unique mission of each institution;

4.1.5. Be based on a set of objective performance metrics that reflect and support the State’s higher education goals and priorities;

4.1.6. Incorporate safeguards to ensure stability of the funding formula, including, but not limited to:

4.1.6.a. A Hold Harmless Provision; and

4.1.6.b. To the extent possible, employment of a three-year rolling average for all data metrics; and

4.1.7. Apply an annual inflation adjustment, calculated utilizing the Higher Education Price Index, to each institution's Base Operating Budget, Outcomes-Based Funding Pool, and the system-wide rate per weighted outcome.

4.2. Nothing in this rule shall be interpreted as prohibiting an institution from submitting requests for special appropriations to support capital projects or other projects or initiatives.

4.3. Funding Formula Advisory Committee

4.3.1. The Chancellor shall appoint a Funding Formula Advisory Committee (Advisory Committee) whose membership shall be comprised of the president of each institution or a president's designee and additional members with relevant expertise as deemed appropriate and necessary by the Chancellor.

4.3.2. The Chancellor or his or her designee shall serve as the chair of the Advisory Committee.

4.3.3. The Advisory Committee shall meet at least annually at a time and place determined by the Chancellor.

4.3.4. The Advisory Committee shall review the funding formula components and identify needed revisions, additions, or deletions to the formula.

4.3.5. The Chancellor shall not be bound by the advice of the Advisory Committee.

4.4. Amendments or Revisions to the Funding Formula. – The Chancellor, in consultation with the Advisory Committee and upon approval by the Commission, may revise the metrics comprising the funding formula outlined in Subsection 4.5 below as necessary based on changes in State priorities.

4.5. Funding Formula Elements.

4.5.1. Funding Formula calculations shall, at a minimum, be based on the following data metrics:

4.5.1.a. Progression Outcomes.

4.5.1.b. Completion Outcomes.

4.5.1.b.1. Associate degree completers;

4.5.1.b.2. Bachelor's degree completers;

4.5.1.b.3. Master's degree and post-master's certificate completers;

4.5.1.b.4. Doctoral and/or law degree completers;

4.5.1.c. Workforce Outcomes

4.5.1.c.1. Graduates earning wages in West Virginia; and

4.5.1.c.2. Graduates enrolled in continued postsecondary education.

4.5.1.d. Institutional investments in research and development, as defined by this Rule.

4.5.1.e. Efficiency Outcomes, based on the number of students earning associate and/or bachelor's degrees per 100 full-time equivalent (FTE) undergraduate students.

4.5.1.f. Other metrics as defined by the Chancellor, in consultation with the Commission and the Advisory Committee.

4.5.2. Mission Weighting

4.5.2.a. The Funding Formula shall incorporate mathematical factors to provide for differential weighting of data metrics based on institutional mission.

4.5.2.b. Mission weights shall be established in consultation with institutional leadership, within parameters established by the Chancellor, and must be approved by each institution's board of governors. The boards of governors shall notify the Chancellor of such institutional mission weights by letter from the board's chair or the chair's designee.

4.5.2.c. Should a board of governors fail to adopt institutional mission weights and submit notification of the same to the Chancellor prior to the established deadline, the Chancellor shall determine that institution's mission weights on the board's behalf.

4.5.2.d. Mission weights shall be finalized at the beginning of each five-year funding cycle and may not be amended or adjusted prior to the end of the cycle; *Provided*, that the Chancellor may grant exceptions for good cause shown.

4.6. Data Collection Requirements

4.6.1. Each institution is responsible for the timely submission to the Commission of all data necessary for the administration of the funding formula.

4.6.2. On or before July 1 of each year, the Commission shall publish and distribute a calendar specifying due dates for the submission of data elements required for the administration of the funding formula.

4.6.3. Should an institution fail to submit all necessary data prior to the deadline prescribed by the Commission, the institution's budget request shall be based on the recommended funding level from the most recent fiscal year in which all data were provided, with the Outcomes Based Funding Pool amount reduced by five percent (5%) and no adjustment for inflation applied.

4.6.4. Each institutional board of governors shall adopt a policy pursuant to W. Va. Code § 18B-1-6 establishing procedures and internal controls that ensure the integrity and validity of data submitted in support of the funding formula. The boards shall submit their initial policies to the Commission no later than June 30, 2023 and any subsequent amendments thereto in accordance with statutory rulemaking procedures.

4.6.5. The Commission may conduct periodic audits of institutional data submissions, institutional processes and procedures governing the collection and submission of data, any source data

upon which submitted data files are based, and any other funding formula related data determined necessary by the Chancellor. The cost of such audits shall be borne by the Commission.

4.7. State Priority Degree Fields

4.7.1. The funding formula shall incentivize associate and bachelor's degree production in certain fields identified by the West Virginia Department of Commerce as State Priority Programs.

4.7.2. As the State's workforce needs are everchanging, the Department of Commerce may recommend designating a new State Priority Program at any point in the funding cycle.

4.7.3. Once identified as a State Priority Program, a program shall maintain the Priority designation for a period of at least five full academic years.

4.7.4. State Priority Programs shall be identified by the Classification of Instructional Programs (CIP) Code associated with the program of study in the Commission's official inventory of degree programs.

4.7.5. An institution may request to change the CIP Code of an existing program to a code on the State Priority Programs list but must provide sufficient documentation demonstrating that the coursework and content delivered through an approved program of study align with the proposed new CIP discipline.

4.7.6. For any new academic program assigned a CIP Code on the State Priority Programs list, the Chancellor may require an institution to submit documentation demonstrating that the coursework and content delivered through an approved program of study align with the proposed new CIP discipline.

4.7.7. The Chancellor may disqualify any new or existing academic program from being identified as a State Priority Program if it is determined that the coursework and content delivered through an approved program of study do not align sufficiently with the proposed new CIP discipline.

4.7.8. An institution may appeal any decision by the Chancellor to disqualify a State Priority Program. Such appeal shall be made in writing to the Commission for consideration at the Commission's next regular meeting; *Provided* that such appeal is submitted no less than thirty (30) days prior to the scheduled meeting date. Changes to the State Priority Program inventory resulting from an appeal shall have no retroactive effect on model calculations.

§133-2-5. Formula Calculations

5.1. The funding formula shall operate on a five-year cycle, beginning with fiscal year 2024 budgeting cycle.

5.2. Benchmarking

5.2.1. In the first year of each funding cycle, abbreviated herein as year zero (y_0), the Commission shall establish baseline values for each metric based on an average of the three most recent full academic years of available data. The baseline data shall provide a basis of comparison upon which institutional performance shall be gauged in subsequent years of the funding cycle (years one through four).

5.2.2. In each year following y_0 , each institution's recommended funding level shall be calculated based on the increase or decrease of the institution's total outcomes score as compared to the y_0 benchmark value.

5.3. Funding Formula Calculations

5.3.1. At the beginning of each annual budget cycle, the following values shall be calculated and used in the determination of each institution’s recommended base appropriation request:

5.3.1.a. The number of outcomes achieved within each data metric, with weighting factors applied where appropriate for:

5.3.1.a.1. Students representing Focus Populations;

5.3.1.a.2. Associate and bachelor’s degrees awarded in State Priority Programs; and

5.3.1.a.3. On-time bachelor’s degree completion;

5.3.1.b. The Total Outcomes Score based on an average of the three most current years of data for each of the metrics established in Section 4.5 of this rule;

5.3.1.c. The net increase or decrease in outcomes score between the current year and the benchmarking year (y₀);

5.3.1.d. The inflation-adjusted rate per outcome;

5.3.1.e. The Base Operating Budget, adjusted for inflation; and

5.3.1.f. The prior year’s Outcomes Based Funding level, adjusted for inflation.

5.3.2. Each institution’s base appropriation request shall be determined by the following calculations:

5.3.2.a. The net increase or decrease in outcomes score is multiplied by the system-level rate per outcome to determine the net change in Outcomes Based Funding. This value is added to the inflation-adjusted Outcomes Based Funding level from the prior year.

5.3.2.b. The prior year’s Base Operating Budget is adjusted for inflation and added to the Outcomes Based Funding pool, calculated in paragraph 5.3.2.a of this rule.

5.3.2.c. Any annual reduction to an institution’s Outcomes Based Funding pool shall not exceed five percent (5%).

~~§133-2-1. General.~~

~~— 1.1. Scope. — This rule establishes the principles to guide the development of financing and resource allocation policies and procedures to be utilized by the Higher Education Policy Commission.~~

~~— 1.2. Authority — W. Va. Code §18B-1B-4(a)(8).~~

~~— 1.3. Filing Date. — June 7, 2001.~~

~~— 1.4. Effective Date. — July 1, 2001.~~

~~§133-2-2. Purpose.~~

~~— 2.1. The primary purpose of this rule is to establish guidelines to be used by the Higher Education Policy Commission in:~~

~~— 2.1.1. Allocating state appropriated~~

unrestricted resources to the institutions.

~~2.1.2. Setting targets for shares of institutional revenues to be contributed from education and general unrestricted revenues.~~

~~2.1.3. Reviewing tuition and fee schedules approved by the individual colleges and universities for consistency with Policy Commission and West Virginia Code guidelines and parameters.~~

~~2.1.4. Establishing policies that address student financial aid decisions.~~

~~2.1.5. Establishing policies regarding the role of all educational and general unrestricted revenue in calculating institutional eligibility for equity funding.~~

§133-2-3. Guidelines.

~~3.1. The following will guide the further development of the policies and procedures to be utilized in financing and resource allocation within the West Virginia system of public higher education:~~

~~3.1.1. All data reported will be based on national uniform and consistent definitions as adopted or established by the Higher Education Policy Commission. If no national standard exists, the Policy Commission may adopt appropriate standards.~~

~~3.1.2. Institutional requirements for additional recordkeeping and reporting will be minimized.~~

~~3.1.3. A schedule for reporting of information and for decision making will be established by the Commission.~~

~~3.1.4. Information from peer institutions as determined by the Commission will be utilized in various ways. The most recently available IPEDS data will form the basis of any comparisons.~~

~~3.1.5. The president or administrative head of each public college, university, regional campus, or community and technical college~~

~~shall be responsible for ensuring that all requested information is submitted in a timely fashion to the Policy Commission and shall certify that the information submitted has been reviewed for accuracy.~~

§133-2-4. Principles.

~~4.1. Operating Budget.~~

~~4.1.1. Base Budget.~~

~~4.1.1.1. The base budget amount for each budget request year will be determined by the Commission in consultation with each institution.~~

~~4.1.1.2. This base budget includes unrestricted educational and general revenues from all sources. Unrestricted educational and general revenues are defined as all audited unrestricted current fund revenues, expenditures, transfers, and other changes; minus auxiliary revenue, hospital revenue, and independent operations.~~

~~4.1.2. State resources will be allocated to institutions in the following categories:~~

~~4.1.2.1. Continuation base amount from previous year.~~

~~4.1.2.2. Sustained quality support.~~

~~4.1.2.3. Peer equity.~~

~~4.1.2.4. Research challenge.~~

~~4.1.2.5. Independently accredited community and technical college development.~~

~~4.1.2.6. Incentives for contributions to state priorities.~~

~~4.1.3. Funds from all these categories will be released to institutions in whole or part when the Policy Commission certifies that the institution is meeting the objectives established in its compact.~~

~~4.1.4. The Policy Commission will establish the amount to be included in its budget~~

~~request for each category annually with the conditions that:~~

~~4.1.4.1. Funds will be requested for each category.~~

~~4.1.5. Sustained Quality Support.~~

~~4.1.5.1. Funds designated for sustained quality support will be allocated to all institutions in proportion to institutions' base budgets in accordance with W. Va. Code §18B-1A-5(b)(6)(E).~~

~~4.1.5.2. Each year's allocations will be added to the institutions' base budgets for subsequent years unless the Policy Commission determines that substantial change in institutional mission or structure has occurred requiring a change in the base budget.~~

~~4.1.6. Peer Equity.~~

~~4.1.6.1. Policy Commission establishes benchmark funding amounts each year.~~

~~4.1.6.2. Allocated in accordance with W. Va. Code §18B-1A-5(b)(6)(A).~~

~~4.1.6.3. Added to base.~~

~~4.1.6.4. Continued until all institutions achieve at least 90-100 percent of benchmark amounts, as a measure of external equity. It is the goal of the Commission to first attain internal equity among institutions by raising the minimum value until all institutions reach the same level. External equity goals will be addressed only after internal equity has been accomplished. Further, it is the intention of the Commission that institutions should not lose ground relative to peer attainment. As used herein, "external equity" is the funding of the institution relative to its peers, and "internal equity" is leveling of differences in peer funding among the West Virginia institutions.~~

~~4.1.6.5. The Policy Commission may adjust peer equity funds based upon imputation of assumed tuition funds consistent with peer averages.~~

~~4.1.7. Independently Accredited Community and Technical College Development~~

~~4.1.7.1. Allocated in accordance with W. Va. Code §18B-1A-5(b)(6)(B).~~

~~4.1.7.2. Funds allocated for this purpose must be separately controlled and accounted for either by the host institution, the community college component or as otherwise determined by the Commission.~~

~~4.1.8. Research Challenge.~~

~~4.1.8.1. Allocated in accordance with W. Va. Code §18B-1A-5(b)(6)(C).~~

~~4.1.8.2. Amounts awarded must be matched by the institution, on at least a one-for-one basis at the discretion of the Commission.~~

~~4.1.9. Incentives for Institutional Contributions to State Priorities.~~

~~4.1.9.1. The Commission will establish the method of allocation for these funds. The allocation mechanisms will be based on demonstrated contribution toward achievement of state priority goals in accordance with W. Va. Code §18B-1A-5(b)(6)(D).~~

~~4.1.9.2. State priority funds will not be added to the institution's base allocation.~~

~~4.1.9.3. Amounts awarded must be matched by the institution, on at least a one-for-one basis at the discretion of the Commission.~~

~~4.1.10. Use of Funds Once Allocated.~~

~~4.1.10.1. These uses must be in accordance with a budget approved annually by the institution's Governing Board.~~

~~4.2. The Capital Budget.~~

~~4.2.1. The Commission will utilize necessary funds from the state appropriation or tuition and fee revenues to cover annual repayment of bonded indebtedness incurred~~

prior to July 1, 2001.

~~4.2.2. The Commission will develop procedures for creating an approved list of capital projects to be submitted to the legislature with provisos that:~~

~~4.2.2.1. Only projects on the approved list will be eligible for state funding either through direct state appropriation for construction or for repayment of debt.~~

~~4.2.2.2. All capital projects, subject to dollar limits in Commission policy, will be brought to the Commission for approval regardless of source of funding or method of acquisition.~~

~~4.2.2.3. In the event of an emergency, an institution may make a special request for unanticipated capital funding needs.~~

~~4.3. Tuition and Fees.~~

~~4.3.1. The Board of Governors of each institution will establish tuition and fee schedules within guidelines promulgated by the Commission or in West Virginia Code.~~

~~4.3.2. All tuition and fee revenues will remain at the campuses except as may be provided for by Higher Education Policy Commission action or statutory provisions.~~

~~4.3.3. Guidelines for Establishing Tuition Rates.~~

~~4.3.3.1. Differentiation by level (e.g., graduate vs. undergraduate) and by program (e.g., law and medicine vs. other fields) is permissible.~~

~~4.3.3.2. Tuition rates should be near the medians for peer institutions. However, the intent is to relate tuition to "ability to pay" rather than to an absolute level.~~

~~4.3.3.3. Student tuition as a share of revenue (tuition and fees and state appropriation), should be graduated so that students pay the highest share of revenue at the research universities, a lower share at the four-~~

~~year colleges, and the lowest share at community colleges, as defined by the Policy Commission. It is the intent of the Policy Commission to define tuition ranges with the specific tuition to be set by the governing board of each institution.~~

~~4.3.3.4. Community college tuition should approximate peer medians. Without the express approval of the Policy Commission, tuition at component or administratively linked community colleges will not be increased where such tuition exceeds the peer average tuition for West Virginia's stand alone community colleges as calculated by the Policy Commission. In accordance with W. Va. §18B-10-1(h)(3), tuition and fee rates for all component community colleges "will be commensurate with the tuition and fees charged by their peer institutions" within a time frame agreed upon between the institution and the Commission. Each institution with a component community college will submit, as part of its Compact, a plan to the commission regarding the progress toward this goal. In accordance with the Policy Commission guidelines, community colleges offering upper division courses may charge tuition for such courses consistent with the tuition charged for similar courses at West Virginia public four year institutions.~~

~~4.3.3.5. The Policy Commission shall set guidelines for out-of-state tuition levels which take into account the cost of instruction and an appropriate relationship between in-state and out-of-state tuition levels, with out-of-state tuition and fees covering at least the full costs of instruction. It is the intention of the Commission that there be no disincentives for the enrollment of non-resident students unless their admission results in a lack of opportunities for qualified West Virginia residents.~~

~~4.4. Student Financial Aid.~~

~~4.4.1. Each institution shall develop explicit student financial aid policies that address such issues as:~~

~~4.4.2. The manner in which tuition and fee increases are offset by financial aid.~~

~~4.4.3. The balance of need based and merit based aid.~~

~~4.4.4. The balance of loan versus scholarship/grant awards.~~

~~4.5. Tuition Pricing and Discounts.~~

~~4.5.1. The Commission reserves the right to limit discounts or adjustments to tuition revenue. The extent to which tuition and fee pricing is offset or reduces tuition and fee revenue through various discounts such as tuition waivers, reciprocal agreements and metro fees will be a consideration in the Commission's decision regarding allocation of state appropriations to each institution.~~

~~4.6. Other Revenues.~~

~~4.6.1. Institutions are expected to acquire unrestricted and restricted revenues from educational and general sources other than tuition and fees and state appropriations.~~

~~4.6.2. Consistent with this intent:~~

~~4.6.2.1. The peer group median of the per student revenues from sources other than tuition and fee or state appropriations will be established as a target for each institution. State appropriation support for institutions exceeding such targets would not normally be reduced as a~~

~~result of institutional success in this area.~~

~~4.6.2.2. Institutions are expected to seek approval from the Policy Commission for any supplemental budget requests or Budget Digest funding before seeking such funds.~~



WEST VIRGINIA
Community & Technical
COLLEGE SYSTEM

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Council for Community and Technical College
Education, Title 135, Legislative Rule, Series 2,
Performance-Based Funding Formula**

**TITLE 135
LEGISLATIVE RULE
COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

**SERIES 2
FINANCE PERFORMANCE-BASED FUNDING FORMULA**

§135-2-1. General.

1.1. Scope. -- This rule governs development, implementation, and administration of the performance-based funding formula for community and technical colleges under the jurisdiction of the Council for Community and Technical College Education.

1.2. Authority. -- W. Va. Code §§ 18B-1B-4(a)(2).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

1.6. Repeal and Replace. -- This legislative rule repeals and replaces Title 135CSR2 filed April 17, 2009 and effective April 20, 2009.

§135-2-2. Purpose.

2.1. The purpose of this rule is to define the parameters governing the establishment and administration of a performance-based funding formula (funding formula or formula) to be used in the development of annual budget requests, beginning with the 2024 fiscal year budget cycle, for the nine public community and technical colleges under the jurisdiction of the Council.

§135-2-3. Definitions.

3.1. “Academically Underprepared Student” means a West Virginia resident student enrolled in a community and technical college who has at least one of the following risk factors:

3.1.1. Cumulative high school grade point average below 2.50; or

3.1.2. Admitted to the institution based on standardized test scores (ACT, SAT, or ACCUPLACER) that would qualify the student for developmental or remedial placement in mathematics or English based on placement criteria established by 135 C.S.R. 21, *Freshman Assessment and Placement Standards*.

3.2. “Academic/Technical Certificate Degrees Awarded” means the combined total number of students earning a certificate degree, as defined by 135 C.S.R. 11 § 3 (*Degree Designation, General Education Requirements, New Program Approval, and Discontinuance of Existing Programs*), during an academic year. Students earning multiple degrees within an academic year shall be counted as a single outcome for model calculations. In such cases, the outcome score will be calculated based on the degree that yields the institution the highest possible total score with all premium multipliers applied.

3.3. “Adults or Adult Students” means West Virginia Resident students with an approximate age of 25 and older, calculated by subtracting the individual’s year of birth from the submission year for those data used in the calculation of model outcomes.

3.4. “Associate and Bachelor’s Degrees Awarded” means the combined total number of students earning associate or bachelor’s degrees, as defined by 135 C.S.R. 11 § 3, during an academic year. Students earning multiple certificates, associate degrees and/or bachelor’s degrees within an academic year shall be counted as a single outcome for model calculations. In such cases, the outcome score will be calculated based on the degree that yields the institution the highest possible total score with all premium multipliers applied.

3.5. “Awards per 100 Full-Time Equivalent (FTE) Students” means the combined total number of unique students earning at least one certificate, associate, or bachelor’s degree within an academic year for every 100 full-time equivalent (FTE) degree-seeking students.

3.6. “Base Appropriation” means the amount of funding that a community and technical college receives through a state appropriation for its operations and for which there are no significant restrictions on expenditure.

3.7. “Chancellor” means the Chancellor for Community and Technical College Education, as that term is defined by W. Va. Code §§ 18B-2-1 and 18B-2B-2(d), or his or her designee.

3.8. “Classification of Instructional Programs (CIP) Code” means a numerical identifier assigned by the National Center for Education Statistics to an academic discipline to support tracking and reporting data at the field-of-study level.

3.9. “Community and Technical College,” in the singular or plural, means the State’s public community and technical colleges, as that term is defined by W. Va. Code § 18B-2-1.

3.10. “Council” means the Council for Community and Technical College Education as defined by W. Va. Code § 18B-2-1 and as created by W. Va. Code § 18B-2B-1, et seq.

3.11. “Focus Population” means West Virginia resident students identified as academically underprepared, adults, and/or low-income based on the criteria defined by this Rule.

3.12. “Full-Time Equivalent (FTE) Student” is an enrollment metric calculated by dividing the total number of credit hours generated by a degree-seeking student in credit-bearing classes during the summer, fall, and spring semesters of an academic year by 30.

3.13. “Higher Education Price Index (HEPI)” is an inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.

3.14. “Hold-Harmless Provision” means a safeguard in the funding formula designed to provide stability and predictability in the formula by preventing an institution’s outcomes-based funding allotment from decreasing by more than five percent (5%) from one academic year to the next.

3.15. “Low-Income Student” means a West Virginia resident student who, based on current and historical records, is identified as having received financial assistance through the Federal Pell Grant program for at least one semester at any State institution of higher education.

3.16. “Premium” is a mathematical weighting factor applied to certain formula calculations for West Virginia resident students identified as belonging to one or more focus populations or certificates or degrees awarded in fields identified as State Priority Fields.

3.17. “Progression Outcomes” means the number of full-time and part-time certificate-, associate degree- and/or bachelor’s degree-seeking students whose cumulative credits earned at the institution at the beginning of a semester are less than the established credit hour threshold benchmarks of 15, 30, or 45 student credit hours and whose cumulative credit hours earned at the end of the semester are equal to or greater than the credit hour threshold benchmarks during the academic year.

3.18. “Residual Funds” means funding that is not obligated through formula calculations as a result of a decline from one year to the next in the total number of outcomes across all institutions.

3.19. “Scaling Factor” is a mathematically derived value used in formula calculations for the purpose of adjusting outcome values across different metrics to values of comparable magnitude.

3.20. “State Priority Programs” means certificate, associate degree, or bachelor’s degree programs identified by the West Virginia Department of Commerce as being aligned with occupations in high or critical demand statewide, or within an institution’s service region as defined by W. Va. Code § 18B-3C-4.

3.21. “Transfers to a Four-Year Institution” means the number of certificate, associate, or bachelor’s degree-seeking students who transferred to any West Virginia public baccalaureate institution in an academic year and accumulated at least 15 student credit hours from the originating community and technical college. The student must have been enrolled at the originating community and technical college at any time one academic year or less prior to transferring (i.e., “continuously enrolled”). Students transferring to a baccalaureate institution in the fall after being enrolled at a community and technical college the previous spring, but not the previous summer, are included in this outcome.

3.22. “West Virginia Resident” or “Resident” means an individual enrolled at a community and technical college with an in-state tuition and fee status as defined by 135 C.S.R. 25, *Residency Classification for Admission and Fee Purposes*.

3.23. “Workforce Completions” means the number of individuals completing short-term training programs deemed eligible by the Chancellor, within a 12-month period as defined by the Chancellor, generally in programs of study below the one-year certificate level.

3.24. “Workforce Outcomes” means the total number of unduplicated graduates completing a certificate, associate, or bachelor’s degree within an academic year who two years after graduation were either enrolled in further higher education or were earning annual reported wages of at least two times the federal poverty level for a single household. Annual wages are based on quarterly earnings reported through the West Virginia Unemployment Compensation Wage Records.

3.25. “Workforce Training Contact Hours” means the cumulative total number of instructional hours completed by students enrolled in short-term training programs deemed eligible by the Chancellor, within a 12-month period as defined by the Chancellor, generally in programs of study below the one-year certificate level.

§135-2-4. Formula Development, Implementation, and Administration.

4.1. The Chancellor shall develop, in consultation with the Funding Formula Advisory Committee, as defined in section 4.3 of this Rule, a funding formula for the community and technical colleges that will serve as a broad framework for efforts to improve student outcomes and institutional efficiency. The

Council shall use the funding formula to determine the annual base budget request for each community and technical college, beginning with the fiscal year 2024 budgeting cycle. The formula shall, at a minimum:

4.1.1. Apply to thirty percent (30%) of each institution's base appropriation, referred to herein as the Outcomes-Based Funding Pool;

4.1.2. Set aside seventy percent (70%) of each institution's base appropriation, referred to herein as the Base Operating Budget, which shall be exempt from outcomes-based funding calculations;

4.1.3. Hold institutions accountable for increasing the educational attainment levels of West Virginia citizens by addressing the State's economic development and workforce needs and promoting increased degree production, with a particular emphasis on degrees awarded in academic programs aligned with State Priority Fields;

4.1.4. Acknowledge the unique mission of each community and technical college;

4.1.5. Be based on a set of objective performance metrics that reflect and support the State's higher education goals and priorities;

4.1.6. Incorporate safeguards to ensure stability of the funding formula, including, but not limited to:

4.1.6.a. A Hold Harmless Provision; and

4.1.6.b. To the extent possible, employment of a three-year rolling average for all data metrics; and

4.1.7. Apply an annual inflation adjustment, calculated utilizing the Higher Education Price Index, to each institution's Base Operating Budget, Outcomes-Based Funding Pool, and the system-wide rate per weighted outcome.

4.2. Nothing in this rule shall be interpreted as prohibiting an institution from submitting requests for special appropriations to support capital projects or other projects or initiatives.

4.3. Funding Formula Advisory Committee

4.3.1.a. The Chancellor shall appoint a Funding Formula Advisory Committee (Advisory Committee) whose membership shall be comprised of the president of each community and technical college or a president's designee and additional members with relevant expertise as deemed appropriate and necessary by the Chancellor.

4.3.1.b. The Chancellor or his or her designee shall serve as the chair of the Advisory Committee.

4.3.1.c. The Advisory Committee shall meet at least annually at a time and place determined by the Chancellor.

4.3.1.d. The Advisory Committee shall review the funding formula components and identify needed revisions, additions, or deletions to the formula.

4.3.1.e. The Chancellor shall not be bound by the advice of the Advisory Committee.

4.4. Amendments or Revisions to the Funding Formula. – The Chancellor, in consultation with the Advisory Committee and upon approval by the Council, may revise the metrics comprising the funding formula outlined in Subsection 4.5 below as necessary based on changes in State priorities.

4.5. Funding Formula Elements.

4.5.1. Funding Formula calculations shall, at a minimum, be based on the following data metrics:

4.5.1.a. Progression outcomes.

4.5.1.b. Completion Outcomes.

4.5.1.b.1. One-year certificate completers;

4.5.1.b.2. Associate and bachelor's degree completers;

4.5.1.b.3. Students transferring to a four-year institution;

4.5.1.b.4. Workforce training contact hours completed; and

4.5.1.b.5. Students completing short-term workforce training programs.

4.5.1.c. Workforce Outcomes

4.5.1.c.1. Graduates earning wages in West Virginia; and

4.5.1.c.2. Graduates enrolled in continued postsecondary education.

4.5.1.d. Efficiency Outcomes, based on the number of students earning certificates and degrees per 100 full-time equivalent (FTE) students.

4.5.1.e. Other metrics as defined by the Chancellor, in consultation with the Council and the Advisory Committee.

4.5.2. Mission Weighting

4.5.2.a. The Funding Formula shall incorporate mathematical factors to provide for differential weighting of data metrics based on institutional mission.

4.5.2.b. Mission weights shall be established in consultation with institutional leadership, within parameters established by the Chancellor, and must be approved by each institution's board of governors. The boards of governors shall notify the Chancellor of such institutional mission weights by letter from the board's chair or the chair's designee.

4.5.2.c. Should a board of governors fail to adopt institutional mission weights and submit notification of the same to the Chancellor prior to the established deadline, the Chancellor shall determine that institution's mission weights on the board's behalf.

4.5.2.d. Mission weights shall be finalized at the beginning of each five-year funding cycle and may not be amended or adjusted prior to the end of the cycle; *Provided*, that the Chancellor may grant exceptions for good cause shown.

4.6. Data Collection Requirements

4.6.1. Each institution is responsible for the timely submission to the Council of all data necessary for the administration of the funding formula.

4.6.2. On or before July 1 of each year, the Council shall publish and distribute a calendar specifying due dates for the submission of data elements required for the administration of the funding formula.

4.6.3. Should an institution fail to submit all necessary data prior to the deadline prescribed by the Council, the institution's budget request shall be based on the recommended funding level from the most recent fiscal year in which all data were provided, with the Outcomes Based Funding Pool amount reduced by five percent (5%) and no adjustment for inflation applied.

4.6.4. Each institutional board of governors shall adopt a policy pursuant to W. Va. Code § 18B-1-6 establishing procedures and internal controls that ensure the integrity and validity of data submitted in support of the funding formula. The boards shall submit their initial policies to the Council no later than June 30, 2023 and any subsequent amendments thereto in accordance with statutory rulemaking procedures.

4.6.5. The Council may conduct periodic audits of institutional data submissions, institutional processes and procedures governing the collection and submission of data, any source data upon which submitted data files are based, and any other funding formula related data determined necessary by the Chancellor. The cost of such audits shall be borne by the Council.

4.7. State Priority Degree Fields

4.7.1. The funding formula shall incentivize undergraduate certificate, associate degree, and bachelor's degree production in certain fields identified by the West Virginia Department of Commerce as State Priority Programs.

4.7.2. As the State's workforce needs are everchanging, the Department of Commerce may recommend designating a new State Priority Program at any point in the funding cycle.

4.7.3. Once identified as a State Priority Program, a program shall maintain the Priority designation for a period of at least five full academic years.

4.7.4. State Priority Programs shall be identified by the Classification of Instructional Programs (CIP) Code associated with the program of study in the Council's official inventory of degree programs.

4.7.5. An institution may request to change the CIP Code of an existing program to a code on the State Priority Programs list but must provide sufficient documentation demonstrating that the coursework and content delivered through an approved program of study align with the proposed new CIP discipline.

4.7.6. For any new academic program assigned a CIP Code on the State Priority Programs list, the Chancellor may require an institution to submit documentation demonstrating that the coursework and content delivered through an approved program of study align with the proposed new CIP discipline.

4.7.7. The Chancellor may disqualify any new or existing academic program from being identified as a State Priority Program if it is determined that the coursework and content delivered through an approved program of study do not align sufficiently with the proposed new CIP discipline.

4.7.8. An institution may appeal any decision by the Chancellor to disqualify a State Priority Program. Such appeal shall be made in writing to the Council for consideration at the Council's next

regular meeting. Changes to the State Priority Program inventory resulting from an appeal shall have no retroactive effect on model calculations.

§135-2-5. Formula Calculations

5.1. The funding formula shall operate on a five-year cycle, beginning with fiscal year 2024 budgeting cycle.

5.2. Benchmarking

5.2.1. In the first year of each funding cycle, abbreviated herein as year zero (y_0), the Council shall establish baseline values for each metric based on an average of the three most recent full academic years of available data. The baseline data shall provide a basis of comparison upon which institutional performance shall be gauged in subsequent years of the funding cycle (years one through four).

5.2.2. In each year following y_0 , each institution's recommended funding level shall be calculated based on the increase or decrease of the institution's total outcomes score as compared to the y_0 benchmark value.

5.3. Funding Formula Calculations

5.3.1. At the beginning of each annual budget cycle, the following values shall be calculated and used in the determination of each institution's recommended base appropriation request:

5.3.1.a. The number of outcomes achieved within each data metric, with weighting factors applied where appropriate for:

5.3.1.a.1. Students representing Focus Populations; and

5.3.1.a.2. Certificates or degrees awarded in State Priority Programs;

5.3.1.b. The Total Outcomes Score based on an average of the three most current years of data for each of the metrics established in Section 4.5 of this rule;

5.3.1.c. The net increase or decrease in outcomes score between the current year and the benchmarking year (y_0);

5.3.1.d. The inflation-adjusted rate per outcome;

5.3.1.e. The Base Operating Budget, adjusted for inflation; and

5.3.1.f. The prior year's Outcomes Based Funding level, adjusted for inflation.

5.3.2. Each institution's base appropriation request shall be determined by the following calculations:

5.3.2.a. The net increase or decrease in outcomes score is multiplied by the system-level rate per outcome to determine the net change in Outcomes Based Funding. This value is added to the inflation-adjusted Outcomes Based Funding level from the prior year.

5.3.2.b. The prior year's Base Operating Budget is adjusted for inflation and added to the Outcomes Based Funding pool, calculated in paragraph 5.3.2.a of this rule.

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5.3.2.c. Any annual reduction to an institution's Outcomes Based Funding pool shall not exceed five percent (5%).

~~§135-2-1. General.~~

- ~~1.1. Scope: This rule governs finance for the Council for Community and Technical College Education (Council) and affiliated community and technical colleges.~~
- ~~1.2. Authority: West Virginia Code §§ 18B-1-6, 18B-2B-6(e)(2)~~
- ~~1.3. Filing Date: April 17, 2009~~
- ~~1.4. Effective Date: April 20, 2009~~

~~§135-2-2. Purpose.~~

- ~~2.1. The purpose of this rule is to set forth a system of financing community and technical college education in West Virginia. Consistent with that overarching purpose, the rule addresses:
 - ~~2.1.1. The purposes for which the Council would prefer to receive state appropriations from the West Virginia Legislature;~~
 - ~~2.1.2. The procedure by which the Council would allocate any funds that it receives from the Legislature; and~~
 - ~~2.1.3. The process by which the Council will review proposed institutional tuition and fee adjustments.~~~~
- ~~2.2. Consistent with the mandate contained in Senate Bill No. 595 (2008) (Vision 2020 accountability system), the Council has developed an innovative, performance-based funding system that aligns with state and system goals and priorities.
 - ~~2.2.1. The rule outlines a system for allocating funding to develop, expand and sustain high demand technical programs.~~
 - ~~2.2.2. The rule outlines a comprehensive system for allocating funding to institutions for enrolling, retaining and graduating students with additional funding if students require developmental education or started or returned to school as adults.~~
 - ~~2.2.3. The rule modifies the current peer equity formula for allocating equity funding to allow for the use of the most currently available system enrollment and funding data, while allowing for meaningful comparison of shortfalls with peer institutions.~~~~
- ~~2.3. The performance based funding system supports the goals for delivery of comprehensive community and technical college education set forth in the Council's master plan:~~

- ~~2.3.1. To provide access to affordable comprehensive community and technical college education in all regions of West Virginia;~~
- ~~2.3.2. To produce high quality graduates with the general education and technical skills to be successful in the workplace or subsequent education;~~
- ~~2.3.3. To provide high quality workforce development programs that meet the demands of West Virginia's employers and enhance the economic development efforts of the State;~~
- ~~2.3.4. To collaborate with other providers in delivering education and training programs to the community and technical college district; and~~
- ~~2.3.5. To collaborate with the public school system to increase the college going rate in West Virginia.~~

~~§135-2-3. Definitions.~~

- ~~3.1. Adults. Individuals age 25 and older.~~
- ~~3.2. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.~~
- ~~3.3. Base Budget. The amount of funding that a community and technical college receives through a state appropriation for its operations and for which there are no significant restrictions on expenditure.~~
- ~~3.4. Campus. A site identified as a "campus" by the Higher Learning Commission of the North Central Association of Colleges and Schools.~~
- ~~3.5. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal.~~
- ~~3.6. Developmental Education Courses. Community and technical college courses, generally in areas of mathematics, reading and writing, offered to those who lack the fundamental education competencies to be successful in college level work.~~
- ~~3.7. Educational and General Fees. Charges levied on all students of that class or category to support educational and general program services or optional charges levied for education and general services collected only from students using the service or from students for whom the services are~~

~~made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations.~~

~~3.8. Higher Education Price Index. Inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.~~

~~3.9. Momentum Point. A level of student achievement that makes it more likely that a student will be successful in reaching an additional level of academic achievement, obtaining employment at a higher wage, or maintaining employment where the acquisition of increased skills is necessary.~~

~~3.10. Peer. A higher education institution located in another state that is similar to a West Virginia community and technical college.~~

~~3.11. Required Fees. Charges levied to all students of a particular class or category (e.g., undergraduate).~~

~~§135-2-4. Goals. The Council seeks to achieve the following goals and objectives with its finance rule:~~

~~4.1. To ensure that state funding is requested from the Legislature to achieve strategic priorities of the State and distributed by the Council in a manner that is consistent with the following principles:~~

~~4.1.1. Only new state funding shall be allocated in a manner that is consistent with the provisions of this rule. In the absence of a compelling justification, current state base budget allocations may not be redistributed among community and technical colleges.~~

~~4.1.2. State Priorities. W. Va. Code § 18B-1A-5(b)(6)(D).~~

~~4.1.2.1. State priorities for the delivery of comprehensive community and technical college education identified by the Legislature as put forth in West Virginia Code §18B-1D-3 and the Council's master plan include the delivery of high-demand technical programs; recruitment, retention and graduation of students, particularly adult students; providing access to comprehensive community and technical college education in all regions of the State; and providing a skilled workforce to meet the needs of employers and enhance the state's economic development efforts.~~

~~4.1.2.2. Most new funding requested from the Legislature by the Council will align with state priorities, and the Council's master plan for community and technical college education.~~

~~4.1.2.3. Any funding appropriated by the Legislature to address a state priority shall be allocated by the Council in a manner that is most likely to maximize achievement of that state priority across the Community and Technical College System.~~

~~4.1.3. Sustained Quality. W. Va. Code § 18B-1A-5(b)(6)(E).~~

~~4.1.3.1. Some new funding requested from the Legislature by the Council will seek to ensure that the quality of current community and technical college education, including faculty and staff salaries, is sustained over time and that investments are made to support the renewal of facilities and equipment.~~

~~4.1.3.2. Any funding appropriated by the Legislature to ensure the sustained quality of community and technical college education shall be allocated by the Council on an equal percentage basis or utilizing an allocation formula, unless there are disparate needs.~~

~~4.1.4. Peer Equity. W. Va. Code § 18B-1A-5(b)(6)(A).~~

~~4.1.4.1. Some new funding requested by the Council will seek to ensure that base budget appropriations are relatively equitable among institutions and seek to remedy past inequities.~~

~~4.1.4.2. Any funding appropriated by the Legislature to address equity among community and technical colleges shall be allocated utilizing a formula that compares the relative funding of West Virginia community and technical colleges and their peer institutions nationally and devotes greater amounts of funding to community and technical colleges that are farthest away from their peers in terms of funding.~~

~~4.2. To allow community and technical colleges to charge and collect sufficient tuition and fee revenue to operate effectively while at the same time striving to ensure that the cost of attendance at community and technical colleges does not unduly limit student access or leave students with excessive debt at the conclusion of their educations.~~

~~§135-2-5. State Priorities Funding: High-Demand Technical Programs.~~

~~5.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall "[d]evelop a stable funding stream for state institutions of higher education to pay for essential programs which are expensive to deliver, are in high demand and/or are critical to the state's capacity to replace an aging workforce as employees retire. This objective has a particular impact on community and technical colleges which deliver high cost technical programs." W. Va. Code §18B-1D-3(b)(6).~~

~~5.2. Findings. The Council finds:~~

~~5.2.1. Community and technical colleges must develop new, and expand and maintain existing, high demand technical programs to meet State workforce needs.~~

~~5.2.2. High demand technical programs typically cost more to develop, expand and maintain than do other types of programs.~~

~~5.2.3. The State of West Virginia has made a significant investment in community and technical college capital construction and renovation to support advanced technology centers and other flexible space in which high demand technical programs can be offered.~~

~~5.2.4. The State of West Virginia has made a significant investment to expand existing high demand allied health programs, but has not developed a funding strategy to ensure the long term sustainability of these programs.~~

~~5.2.5. The State of West Virginia has made an ongoing investment in technical program development, which funds the development of new high demand technical programs. There currently is no ongoing funding available to support the expansion of high demand technical programs.~~

~~5.2.6. The State of West Virginia has made almost no investment to ensure that high demand programs, once developed or expanded, are maintained over time. Peer equity funding, while taking into consideration program mix as part of the peer selection process, certainly does not ensure that high cost and high demand programs are supported financially. As a result, community and technical colleges have little financial incentive to develop, expand and/or maintain high demand technical programs.~~

~~5.2.7. A successful funding program for high demand technical programs will have three mechanisms:~~

~~5.2.7.1. A mechanism to support the development of new high demand technical programs; and~~

~~5.2.7.2. A mechanism to support the expansion of existing high-demand technical programs; and~~

~~5.2.7.3. A mechanism to support the maintenance of existing high-demand technical programs.~~

~~5.3. Funding Model. A hybrid funding model shall be utilized to address both the development and expansion and the maintenance of high-demand technical programs.~~

~~5.3.1. Development and Expansion of High-Demand Technical Programs.~~

~~5.3.1.1. The Council shall utilize technical program development grant funding to support both new and expanded high-demand technical programs.~~

~~5.3.1.2. Technical program development grant funding shall be allocated to institutions through a Request for Proposals (RFP) process.~~

~~5.3.1.3. Separate RFPs shall be developed for new high-demand technical programs and expanded high-demand technical programs.~~

~~5.3.1.4. Priority for technical program development grant funding shall be given to programs for which there is a demonstrable statewide or regional workforce demand.~~

~~5.3.1.5. Priority for technical program development grant funding generally shall be given to new programs over expanded programs.~~

~~5.3.1.6. Technical program development grant funding shall support new or expanded high-demand technical programs for a period of up to three years.~~

~~5.3.1.7. Technical program development grant funding is intended to provide one-time funding to cover programmatic costs. Grant funds may be used for any type of expense, including staffing, other types of operating costs, and capital and equipment purchases.~~

~~5.3.1.8. New Programs. The following rules shall apply to new high-demand technical programs:~~

~~5.3.1.8.1. To qualify for funding for a new program, a community and technical college shall submit a~~

~~grant application, including a detailed budget, for a program that it currently does not offer.~~

~~5.3.1.8.2. The Council annually shall establish a maximum amount for all such awards.~~

~~5.3.1.9. Expanded Programs. The following shall apply to expanded high-demand technical programs.~~

~~5.3.1.9.1. To qualify for expansion funding, a community and technical college shall submit a grant application, including a detailed budget, for a program that it currently offers.~~

~~5.3.1.9.2. Awards shall be calculated based on the increased number of full-time equivalent (FTE) students to be served by the expanded program.~~

~~5.3.1.9.3. If a community and technical college fails to enroll the number of FTE students it has committed to enroll, it shall reimburse the Council on an FTE student basis.~~

~~5.3.1.10. At the end of the three-year funding cycle, the high-demand technical programs funded through this program, if also high-cost, shall be incorporated into the maintenance funding model described in section 5.3.2 of this rule.~~

~~5.3.1.11. Technical program development funding is intended to be a revolving pool of grant funds. Once a grant ends, the program moves from the development grant funding pool to the maintenance pool described in section 5.3.2 of this rule, and newly unencumbered technical program funds shall be made available for a new cycle of grant awards.~~

~~5.3.1.12. The Council may promulgate a procedural rule to govern the administration of the technical program development program.~~

~~5.3.2. Maintenance of High-Demand, High-Cost Technical Programs.~~

~~5.3.2.1. The Council shall request funding from the Legislature to support the maintenance of high-demand, high-cost technical programs.~~

~~5.3.2.2. The Council annually shall determine which technical programs qualify as both high-demand and high-cost and thus shall be considered for maintenance funding. The~~

~~Council may assign greater weights to programs it deems of either higher demand or higher cost than other high-demand, high cost technical programs.~~

~~5.3.2.2.1. Factors to be evaluated in determining whether a technical program is high demand include: whether economic or survey data indicate that jobs that pay a living wage are available for students who complete the technical program.~~

~~5.3.2.2.2. Factors to be evaluated in determining whether a technical program is high cost include, but are not limited to: specialized programmatic accreditation; required low faculty student ratio; high cost of faculty; a high percentage of program content involving courses with laboratory and/or on-campus clinical components; and/or the necessity for expensive equipment or specialized facilities to operate the program.~~

~~5.3.2.3. Maintenance funding shall be allocated to each community and technical college based upon the number of credit-hours students completed in high demand, high cost technical programs during the prior two academic years.~~

~~5.3.2.4. Credit hours produced in programs receiving new or expanded technical program grant funding shall not count for maintenance funding during the academic year(s) in which grant funding is provided~~

~~5.3.2.5. Maintenance funding shall never become part of a community and technical college's base budget.~~

~~5.3.2.6. The Council shall promulgate a procedural rule to govern the administration of the technical program maintenance program.~~

~~§135-2-6. State Priorities Funding: Student Momentum Points.~~

~~6.1. Objectives. The Council, in partnership with the Governor's Office and Legislature, shall develop a consistent funding stream to address complementary sets of objectives for community and technical colleges, including:~~

~~6.1.1. "Making maximum effort to recruit and retain adults twenty five years old or over." W. Va. Code § 18B-1D-3(b)(4); and~~

- ~~6.1.2. “Increasing the percentage of functionally literate adults in each region of the state.” W. Va. Code § 18B-1D-3(b)(9); and~~
- ~~6.1.3. “Increasing the percentage of entering students who persist to receive a degree, a certificate or an industry-recognized credential.” W. Va. Code § 18B-1D-3(b)(3).~~
- ~~6.2. Findings. The Council finds:~~
- ~~6.2.1. If community and technical colleges are to increase enrollment, they should do so primarily by recruiting more adult students, who historically have participated in postsecondary education at very low levels in West Virginia.~~
- ~~6.2.2. The State provides need based financial aid for eligible students through the Higher Education Grant Program and Higher Education Adult Part-time Student (HEAPS) Grant Program. The Higher Education Grant Program, however, contains numerous barriers to access that make it challenging for adult students to qualify for awards. Additionally, the State currently provides no special financial support for institutions to recruit adult students or special rewards to institutions for their ultimate persistence and completion of degrees or certificates.~~
- ~~6.2.3. If West Virginia’s functional literacy rates are to improve, community and technical colleges must increase their efforts to assist students to successfully complete developmental education classes to persist and complete postsecondary education.~~
- ~~6.2.4. The State currently provides no special financial support to institutions for successfully assisting developmental education students who persist and complete their certificates and/or degrees.~~
- ~~6.2.5. If West Virginia’s educational attainment rates are to increase, community and technical colleges must do a better job of retaining and graduating all types of students, not just developmental students and adult students.~~
- ~~6.2.6. Research concludes that students who persist through one year of postsecondary education and earn a credential, certificate and/or degree have increased earning power over their lifetime.~~
- ~~6.2.7. The State currently provides no financial incentive for institutions to improve student persistence and completion rates.~~
- ~~6.3. Funding Model. A hybrid funding model shall be utilized to address enrollment, persistence and completion rates of all students, but particularly for students who need developmental education and adult students. The first part of this model will focus on giving institutions~~

~~additional resources to address these challenges. The second part of this model will focus on rewarding institutions for student persistence and completion.~~

~~6.3.1. Funding for Adult Student Coordinators. The Council shall request funding for one Community and Technical College Adult Student Coordinator at each community and technical college.~~

~~6.3.1.1. The coordinator will recruit and assist non-traditional adult students to enroll, persist and complete courses, improve skills sets, obtain certificates and/or degrees within the community and technical college system. The coordinator also will be responsible for collaborating and coordinating efforts of the Adult Basic Education (ABE) program.~~

~~6.3.1.2. The intent of this base allocation is to provide an individual to assist each community and technical college in ensuring that adult students are equipped to be successful within the college system.~~

~~6.3.2. Enrollment, Persistence and Completion Momentum Points. The Council shall request funding to reward institutions for certain types of student enrollment, persistence and completion.~~

~~6.3.2.1. Enrollment Enhancement~~

~~6.3.2.1.1. Adults. Each community and technical college shall be allocated an established dollar amount for each new adult student who enrolls in college for the first time or after a two or more year absence from college.~~

~~6.3.2.1.2. Developmental Students. Each community and technical college shall be allocated an established dollar amount for each student who successfully completes the highest level of developmental courses in math and English and is academically prepared to enter into traditional college courses and programs.~~

~~6.3.2.2. Persistence Enhancement~~

~~6.3.2.2.1. All Students. Each community and technical college shall be allocated an established dollar amount for each student who successfully completes at least thirty (30) credit hours of instruction or earns a certificate.~~

~~6.3.2.2.2. Adult Students. In addition to any allocation under section 5.3.2.2.1 of this rule, each community and technical college shall be allocated an established dollar amount for each adult student who successfully completes at least thirty (30) credit hours of instruction or earns a certificate.~~

~~6.3.2.2.3. Developmental Students. In addition to any allocation under sections 5.3.2.2.1 or 5.3.2.2.2 of this rule, each community and technical college shall be allocated an established dollar amount for each student who successfully completes one or more developmental courses within five (5) years before going on to complete at least thirty (30) credit hours of instruction or earn a certificate.~~

~~6.3.2.3. Completion Enhancement.~~

~~6.3.2.3.1. All Students. Each community and technical college shall be allocated an established dollar amount for each student who successfully earns an associate degree.~~

~~6.3.2.3.2. Adult Students. In addition to any allocation under section 5.3.2.3.1 of this rule, each community and technical college shall be allocated an established dollar amount for each adult student who successfully earns an associate degree.~~

~~6.3.2.3.3. Developmental Students. In addition to any allocation under sections 5.3.2.3.1 or 5.3.2.3.2 of this rule, each community and technical college shall be allocated an established dollar amount for each student who successfully completes one or more developmental courses five (5) or fewer years before earning an associate degree.~~

~~6.3.2.3.4. Board of Governors' Associate of Applied Science Degree and Associate of Applied Science in Occupational Development Degree Recipients. In addition to any allocation under sections 5.3.2.3.1, 5.3.2.3.2 and 5.3.2.3.3 of this rule, each community and technical college shall be allocated an established dollar amount for each adult student who earns a~~

~~Board of Governors' Associate of Applied Science or Associate of Applied Science in Occupational Development degree.~~

~~6.3.2.4. Each benchmark that moves a student closer to a certificate or an associate's degree shall be rewarded with a higher dollar incentive than the previous benchmark.~~

~~6.3.2.5. Institution awards shall be made as soon after Council receipt of enrollment and graduation data as possible.~~

~~6.3.2.6. The Council shall promulgate a procedural rule to govern the administration of the technical program development program.~~

~~§135-2-7. State Priorities Funding Regional Access.~~

~~7.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall develop a stable funding stream to "assure uniform delivery of community and technical college education for all regions of the state." W. Va. Code § 18B-1D-3(b)(7).~~

~~7.2. Findings. The Council finds:~~

~~7.2.1. In order to ensure uniform delivery of community and technical college education across the state, some community and technical colleges must operate multiple campuses.~~

~~7.2.2. Multiple small campuses cost more money to operate than does one large campus, or an instructional site, because of the necessary redundancy of certain services.~~

~~7.2.3. The State currently provides no financial incentive for community and technical colleges to operate multiple campuses. No consideration is given to multi-campus funding in either the peer selection or peer equity funding process.~~

~~7.3. Development of Funding Model. A funding model to address regional access needs to be developed.~~

~~7.3.1. On or before July 1, 2009, the Council shall develop a proposed system to provide enhanced funding to community and technical colleges that operate multiple campuses.~~

~~7.3.2. In defining what constitutes a campus, the Council shall utilize the definition and designations of the Higher Learning Commission of the North Central Association of Colleges and Schools (HLC).~~

~~§135-2-8. State Priorities Funding—Workforce and Economic Development.~~

- ~~8.1. Objective. The Council, in partnership with the Governor's Office and Legislature, shall develop stable funding streams at both the state and institution levels to support statewide workforce and economic development. W. Va. Code § 18B-1D-3(a)(1).~~
- ~~8.2. Findings. The Council finds:~~
- ~~8.2.1. Institutions must have access to funding to meet employers' short-term workforce and economic development needs. Workforce training and development often are provided through non-credit instruction.~~
 - ~~8.2.2. The State does not have an interest in supporting financially all non-credit instruction, but rather only non-credit instruction that supports workforce and economic development.~~
 - ~~8.2.3. The Council currently receives funding through a program called WV ADVANCE to support employers' customized training needs. There, however, currently is no stable funding mechanism at the institution level.~~
 - ~~8.2.4. Currently institutions do not always track, and the Council does not collect, complete data on non-credit instruction that could serve as a basis for allocating funding for such instruction.~~
- ~~8.3. Development of Funding Model. A funding model to address workforce and economic development based non-credit instruction needs to be developed.~~
- ~~8.3.1. Effective with the 2008-2009 academic year, institutions shall begin collecting and reporting on non-credit instruction to the Council.~~
 - ~~8.3.2. On or before July 1, 2010, the Council will develop a proposed formula-based system to fund non-credit instruction that supports the State's workforce and economic development needs.~~
 - ~~8.3.3. Over the period while these changes are being made, the Council shall continue to rely exclusively upon state funding through WV ADVANCE to support workforce and economic development goals.~~
- ~~8.4. Even with the development of a funding model, WV ADVANCE funding will be needed to address state needs in partnership with entities such as the Governor's Office and the West Virginia Development Office.~~

~~§135-2-9. State Priorities Funding—Other Issues.~~

- ~~9.1. The Council, in partnership with the Governor's Office and Legislature, may develop additional appropriation requests and allocation methodologies that align with other state priorities identified in statute or the Council's master plan.~~
- ~~9.2. The Council may request additional funding for any state priority for which the Council deems funding to be inadequate for its stated purpose up to the level that the Council determines to be adequate.~~
- ~~9.3. Once the Council deems an appropriation to be adequate to address a state priority, the Council may request increases in funding at a rate that is equivalent to the prior year's increase in the Higher Education Price Index (HEPI) or other appropriate inflationary benchmark.~~

~~§135-2-10. Sustained Quality Funding Inflationary Adjustments to Institution Base Budgets.~~

- ~~10.1. Objectives. The Council, in partnership with the Governor's Office and Legislature, may develop appropriation requests that address the following objectives:
 - ~~10.1.1. "Sustaining the quality" of community and technical colleges. W. Va. Code § 18B-1A-5; and~~
 - ~~10.1.2. "Adequately compensating faculty, classified employees and other employees at a competitive level to attract and retain high quality personnel." W. Va. Code § 18B-1-1a(d)(9).~~~~
- ~~10.2. Findings. The Council finds:
 - ~~10.2.1. Inflationary pressures result in the cost of providing students with an education to increase.~~
 - ~~10.2.2. Overall, community and technical college faculty, classified employees and other employees are paid below market averages, which make it difficult to attract, retain and motivate quality employees.~~
 - ~~10.2.3. The average salary increases of community and technical college employees should keep pace with the average salary increases of workers in comparable markets.~~
 - ~~10.2.4. The gap between the salaries of community and technical college employees and the salaries of workers in comparable markets should be reduced over time to make salaries more competitive.~~
 - ~~10.2.5. If the State does not offset all or a portion of the increased cost of education resulting from inflation, students bear much of the~~~~

~~burden of the increased costs in the form of increased tuition and fees.~~

~~10.2.6. Low community and technical college tuition removes barriers to access to higher education and reduces the debt load of community and technical college students.~~

~~10.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding to institution base budgets:~~

~~10.3.1. Appropriations to Institution Base Budgets.~~

~~10.3.1.1. The Council annually may request funding to increase institution base budget appropriations by a rate that is equivalent to the prior year's increase in the HEPI or other appropriate inflationary benchmark.~~

~~10.3.1.2. The Council shall allocate any state appropriation aimed at assisting institutions in offsetting inflationary increases on a pro-rata basis.~~

~~10.3.1.3. Any increase in an institution's base budget appropriation shall be considered part of the institution's base budget for future years.~~

~~10.3.2. Appropriations for Faculty and Staff Salaries and Benefits.~~

~~10.3.2.1. The Council annually may request funding to increase institution base budget appropriations by an amount that is equivalent to the prior year's overall percentage increase nationally in community and technical college faculty and staff salaries.~~

~~10.3.2.2. The Council annually also may request funding to reduce the gap between actual faculty and staff salaries and salaries in external markets.~~

~~10.3.2.3. The Council may request one-time or ongoing funding annually to support education, training and development of faculty and staff.~~

~~10.3.2.4. Any increase in an institution's base budget appropriation for salaries and benefits shall be considered part of the institution's base budget for future years.~~

~~§135-2-11. Sustained Quality Funding Instructional Equipment.~~

~~11.1. Objective. The Council, in partnership with the Governor's Office and Legislature, may develop an appropriation request to "fund the~~

~~replacement, upgrading and purchase of equipment to implement and/or maintain technical education programs.” W. Va. Code § 18B-1D-3(b)(6)(B)(iii).~~

~~11.2. Findings. The Council finds:~~

~~11.2.1. The State is making a significant one-time capital investment in facilities and a significant ongoing investment in technical program development to facilitate the expansion of technical programs at community and technical colleges.~~

~~11.2.2. The majority of technical programs that community and technical colleges offer are equipment intensive.~~

~~11.2.3. To keep pace with changes in the workplace, community and technical colleges must update and replace equipment on an ongoing basis.~~

~~11.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding for instructional equipment:~~

~~11.3.1. The Council, in collaboration with community and technical colleges, shall develop an equipment replacement schedule to be utilized to determine the minimum amount of funding each community and technical college should set aside annually for instructional equipment upgrades.~~

~~11.3.2. The Council shall request ongoing funding to replace instructional equipment utilized by community and technical colleges consistent with the annual equipment upgrade cost calculation.~~

~~11.3.3. The Council may request one-time funding to replace instructional equipment utilized by community and technical colleges.~~

~~11.3.4. The Council shall allocate funding received for instructional equipment either utilizing an allocation formula or based on demonstrated need.~~

~~§135-2-12. Sustained Quality Funding – Capital Projects and Facilities Maintenance.~~

~~12.1. Objectives. The Council, in partnership with the Governor’s Office and Legislature, may develop an appropriation request that addresses the following objective: “developing a state-level facilities plan and funding mechanism to reduce the obligation of students and parents to bear the cost of higher education capital projects and facilities maintenance.” W. Va. Code § 18B-1D-3(b)(1).~~

~~12.2. Findings. The Council finds:~~

- ~~12.2.1. Historically, West Virginia has been one of the very few states in the nation that has not funded community and technical college capital projects through state appropriations, but rather through student capital fees.~~
- ~~12.2.2. At most of West Virginia's former administratively linked community and technical colleges, tuition and required fees are significantly higher than the national average and the average at West Virginia's long-standing free-standing community and technical colleges because of student capital fees.~~
- ~~12.2.3. Student capital fees create barriers to community and technical college student access and increase student debt loads.~~
- ~~12.2.4. A way to remove the significant variation in tuition and required fees across the community and technical system is to reduce or eliminate the student capital fees.~~
- ~~12.2.5. The State is in the process of making significant new investments in the construction and renovation of community and technical college facilities.~~
- ~~12.2.6. To maximize the useful life of community and technical college facilities, adequate funds must be set aside to address both routine maintenance and capital maintenance.~~
- ~~12.3. Funding Model. The Council sets forth the following guidelines to govern requests for and distribution of increased sustained quality funding for capital projects, facilities maintenance and instructional equipment.~~
 - ~~12.3.1. Major Capital Projects:
 - ~~12.3.1.1. The Council may request sufficient ongoing funding for capital projects to allow for periodic bond issues to finance major capital projects, including both the renovation of existing facilities and the construction of new facilities.~~
 - ~~12.3.1.2. The Council periodically may request one-time funding for major capital projects, including both the renovation of existing facilities and the construction of new facilities, through a bond issue or other means.~~
 - ~~12.3.1.3. The Council shall allocate capital project funding based on clearly defined system priorities.~~
 - ~~12.3.1.4. The Council shall develop procedures to ensure that state funding provided for major capital projects is spent effectively and efficiently.~~~~

~~12.3.2. Facilities Maintenance.~~

~~12.3.2.1. The Council shall utilize a building renewal formula to determine the minimum amount of funding each community and technical college should set aside annually for maintenance.~~

~~12.3.2.2. The Council regularly shall request sufficient ongoing state funding to ensure that both routine and capital maintenance is not deferred.~~

~~12.3.2.3. The Council also may request one-time funding for high priority facilities maintenance projects, even though this should not be viewed as a preferred funding approach.~~

~~12.3.2.4. The Council shall allocate ongoing state funding for routine and capital maintenance utilizing a building renewal formula.~~

~~12.3.2.5. If state funding is not provided, or is inadequate by itself to avoid having maintenance projects deferred, the Council shall ensure that community and technical colleges collect adequate capital fees to cover both routine and capital maintenance costs.~~

~~§135-2-13. Sustained Quality Funding Financial Aid.~~

~~13.1. Objectives. The Council, in partnership with the Higher Education Policy Commission, Governor's Office and Legislature, may develop appropriation requests that address the following objectives:~~

~~13.1.1. "Removing such financial barriers to the individual's education goals as may remain after he or she has utilized all resources and work opportunities available." W. Va. Code § 18C-1-1(a)(2)(B).~~

~~13.1.2. "Making post-secondary education both accessible and affordable for its citizens." W. Va. Code § 18C-1-3(a)(9).~~

~~13.2. Findings. The Council finds:~~

~~13.2.1. The State provides significant funding for both merit-based and need-based student financial aid.~~

~~13.2.2. Need-based student financial aid generally benefits community and technical college students more than does merit-based student financial aid.~~

~~13.2.3. Community and technical college students expend a significant proportion of their family incomes on higher education, even after accounting for federal, state, and other grant aid.~~

~~13.2.4. At a minimum, the State's investment in need-based student financial aid should keep pace with institution increases in tuition and required fees.~~

~~13.3. Financial Aid.~~

~~13.3.1. The Council annually may request funding to increase need-based financial aid at a percentage that is equivalent to the prior fiscal year's average increase in tuition and required fees.~~

~~13.3.2. The Council annually also may request additional funding for need-based financial aid to serve more students and/or to decrease the debt being incurred by students.~~

~~13.3.3. Any request for additional need-based financial aid should take into consideration changes in federal Pell grant program funding.~~

~~§135-2-14. Peer Equity Funding Peer Selection.~~

~~14.1. Objectives. The primary purpose of selecting peer institutions is to provide a means of comparing West Virginia community and technical colleges to comparable institutions across the nation. W.Va. Code §18B-1A-3(b)(3). Peer comparisons shall be made:~~

~~14.1.1. To determine how to allocate from legislative peer equity funding among West Virginia community and technical colleges;~~

~~14.1.2. To evaluate appropriate levels of tuition and fees;~~

~~14.1.3. To determine comparable faculty and staff teaching requirements and other workloads; and~~

~~14.1.4. For such other purposes as the law may require or the Council find useful or necessary.~~

~~14.2. Findings. The Council finds:~~

~~14.2.1. Overall West Virginia's community and technical colleges are funded significantly below, both in terms of state revenue and overall revenue, than their peer institutions nationally.~~

~~14.2.2. Some community and technical colleges are significantly below their peers in terms of funding than are other community and technical colleges.~~

~~14.2.3. Community and technical colleges that are significantly below their peers in terms of funding should receive additional funding, all other things being equal, than other community and technical colleges.~~

~~14.3. Background of Selection Process.~~

~~14.3.1. Responsibility. The Commission and Council share responsibility for selecting community and technical college peers.~~

~~14.3.1.1. The Commission shall select and adjust peers for community and technical colleges under the jurisdiction of the Council in collaboration with the Council.~~

~~14.3.1.2. Final peer selection is subject to the approval of the Legislative Oversight Commission on Education Accountability.~~

~~14.3.2. Frequency. Peer institutions for each West Virginia public higher education institution shall be adjusted at least every six years or as necessary based on:~~

~~14.3.2.1. Changes in missions of West Virginia public higher education institutions as approved in institutional compacts; or~~

~~14.3.2.2. Changes at peer institutions.~~

~~14.3.3. Pool. Peer institutions shall be selected from among public higher education institutions throughout the United States.~~

~~14.3.4. Number of Peers. At least twenty (20) peer institutions shall be selected for each West Virginia public higher education institution.~~

~~14.3.5. Factors. In selecting peer institutions for West Virginia public higher education institutions, the Commission and Council may consider the following non financial factors available from National Center for Education Statistics Integrated Postsecondary Education Data System (IPEDS) and other sources, including, but not limited to, student headcount and full time equivalent enrollment, percentage of part time students, and program mix.~~

~~14.3.6. Fiscal Year. For purposes of identifying peer institutions, Commission staff shall rely on data from the latest three fiscal years for which complete comparison data is available.~~

~~14.4. Process. The Commission, in consultation with the Council, shall select and adjust peer institutions for each West Virginia community and technical college through an open, deliberative, and objective process and in consultation with each institution's boards of governors.~~

~~14.4.1. Staff shall begin the peer selection or adjustment process by contracting with a national, independent education consulting firm to assist in the process.~~

~~14.4.2. Staff and/or the consulting firm shall develop a proposed list of peer institutions for each West Virginia public higher education institution using the process established in this rule.~~

~~14.4.3. Staff and/or the consulting firm shall review each proposed list of peer institutions to identify potential peer institutions that should be stricken.~~

~~14.4.4. Staff shall provide a copy of the proposed list, including an explanation of any strikes previously made, to the chairman of the institution's board of governors and to the institution's President. The proposed list shall contain at least five (5) alternate institutions.~~

~~14.4.5. Within sixty (60) days of delivery of the proposed list of peer institutions, the board of governors may object in writing to any institutions, including alternates, on the proposed list. The objection shall identify with specificity the reason for the objection.~~

~~14.4.6. Staff and/or the consulting firm shall review each board objection and make a recommendation for the Commission's and Council's consideration.~~

~~14.4.7. If staff and/or the consulting firm determine that an objection is valid, they shall review the remaining list of potential peer institutions to determine whether other institutions should be stricken for the same reason.~~

~~14.4.8. Before making a decision concerning a proposed list of peer institutions, the Commission or Council shall give a representative of the West Virginia public higher education institution an opportunity to address the staff recommendation.~~

~~14.4.9. Once the Commission and Council have approved a proposed list of peer institutions, the proposed list shall be forwarded to the Legislative Oversight Commission on Education Accountability for its consideration and approval.~~

~~§135-2-15. Peer Equity Funding Funding Formula.~~

~~15.1. Objective. The primary objective of peer equity funding is to provide a mechanism to increase internal equity in the funding of West Virginia higher education institutions by adjusting the operating budgets of State institutions so that they are comparable with the operating budgets of peer institutions.~~

~~15.2. Data.~~

~~15.2.1. Enrollment Data.~~

~~15.2.1.1. In determining enrollment levels at West Virginia community and technical colleges, Council staff shall rely on annualized FTE enrollment data provided by the institutions and published in the Commission's and Council's official reports.~~

~~15.2.1.2. In determining enrollment levels at peer institutions, Council staff shall rely on data contained in IPEDS.~~

~~15.2.2. Financial Data.~~

~~15.2.2.1. For West Virginia community and technical colleges, Council staff shall rely on financial data from institutions' audited financial statements.~~

~~15.2.2.2. For peer institutions, Council staff shall rely on financial data submitted by peer institutions to IPEDS.~~

~~15.2.3. Fiscal Year. For purposes of comparing funding of West Virginia community and technical colleges to their peer institutions, Council staff shall rely on:~~

~~15.2.3.1. Data from the latest two fiscal years for which complete data is available for West Virginia community and technical colleges; and~~

~~15.2.3.2. Data from the most recent fiscal year for which complete data is available for peer institutions, which typically is one year behind the most recent data for West Virginia community and technical colleges. The single year of data shall be adjusted utilizing HEPI to provide a comparable comparison.~~

~~15.3. External Comparison.~~

~~15.3.1. Goal. The primary goal of external peer equity funding comparison is:~~

~~15.3.1.1. To calculate the amount each West Virginia community and technical college receives per FTE student to cover instruction-related costs (hereinafter known as variable A); and~~

~~15.3.1.2. To calculate the average amount a West Virginia community and technical college's peer institutions receives per full-time equivalent student to cover~~

~~instruction-related costs (hereinafter known as variable *B*); and~~

~~15.3.1.3. To calculate a percentage ratio of West Virginia community and technical college funding per FTE student to average peer funding per FTE student (hereinafter known as variable *C*).~~

$$\text{Formula: } C = A / B$$

~~15.3.2. Calculating Revenue Per Student~~

~~15.3.2.1. To calculate the amount a West Virginia community and technical college receives per FTE student to cover instruction-related costs (*A*), Council staff shall divide the institution's number of annualized FTE students (hereinafter known as variable *D*) by the sum of the following categories of revenue for the community and technical college's audited financial statements:~~

~~15.3.2.2. State appropriations (hereinafter known as variable *E*) less any clearly identifiable appropriations for capital projects, non-credit instruction, public service or research (hereinafter collectively known as variable *F*); and~~

~~15.3.2.3. Local appropriations, if any (hereinafter known as variable *G*); and~~

~~15.3.2.4. Net student tuition and fees (hereinafter known as variable *H*); and~~

~~15.3.2.5. Tuition discounts and allowances (hereinafter known as variable *I*).~~

$$\text{Formula: } A = [(E - F) + G + H + I] / D$$

~~15.3.3. To calculate the average amount a West Virginia community and technical college's peer institutions receive per FTE student to cover instruction-related costs (*B*), Council staff shall divide all peer institutions' numbers of annualized FTE students (hereinafter known as variable *J*) by the sum of the following categories of revenue reported through IPEDS for all peer institutions:~~

~~15.3.3.1. State appropriations (hereinafter known as variable *K*); and~~

~~15.3.3.2. Local appropriations (hereinafter known as variable *L*); and~~

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~~15.3.3.3. Net student tuition and fees (hereinafter known as variable M); and~~

~~15.3.3.4. Tuition discounts and allowances (hereinafter known as variable N).~~

$$\text{Formula: } B = (K + L + M + N) / J$$

~~15.4. Internal Comparison.~~

~~15.4.1. Goal. The primary goal of internal peer equity funding comparison is to provide a principled methodology for distributing peer equity funding among West Virginia community and technical colleges.~~

~~15.4.2. Pools. Peer equity funding shall be divided into three equal pools.~~

~~15.4.2.1. 70% Funding Goal Pool. The first funding pool shall be divided among all West Virginia community and technical colleges funded at 70% or less of their peers.~~

~~15.4.2.2. 80% Funding Goal Pool. The second funding pool shall be divided among all West Virginia community and technical colleges funded at 80% or less of their peers.~~

~~15.4.2.3. 90% Funding Goal Pool. The third funding pool shall be divided among all West Virginia community and technical colleges funded at 90% or less of their peers.~~

~~15.4.3. Allocation Per Pool. In allocating funding among West Virginia community and technical college in any pool, Council staff shall:~~

~~15.4.3.1. Calculate each West Virginia community and technical college's total funding deficiency (hereinafter known as variable O) by multiplying the institution's number of annualized FTE students (variable D):~~

~~15.4.3.1.1. By the difference between the amount the West Virginia institution receives per FTE student to cover instruction-related costs (variable A) and the average amount a West Virginia institution's peer institutions receives per full time equivalent student to cover instruction-related costs (variable B); and~~

~~15.4.3.1.2. By the percentage funding goal (70%, 80%, 90%) (hereinafter known as variable P).~~

$$\text{Formula: } O = D * (B - A) * P$$

~~15.4.3.2. Calculate the total funding deficiency of all West Virginia community and technical colleges eligible to participate in the funding pool (hereinafter known as variable Q):~~

$$\text{Formula: } Q = O_1 + O_2 + O_n \dots$$

~~15.4.3.3. Allocate the available funding to each eligible West Virginia community and technical colleges (hereinafter known as variable R) by multiplying the total amount of available funding (variable S) by the ratio of the institution's total funding deficiency (variable O) to the total funding deficiency of all institutions (variable Q):~~

$$\text{Formula: } R = S * (O_n / Q)$$

~~15.4.4. Special Rules:~~

~~15.4.4.1. If the amount available for allocation (variable R) at any funding level exceeds the total funding deficiency for all eligible West Virginia institutions at that funding level (variable Q), the excess funding available for allocation shall be allocated among institutions at the next funding level.~~

~~15.4.4.2. In allocating funding at successive funding levels, institutional deficiencies shall be calculated taking into consideration allocations provided at previous funding levels.~~

~~§135-2-16. Tuition and Fee Adjustments.~~

~~16.1. Objectives. The Council, in partnership with the governing boards of the community and technical college system, shall enhance education opportunities for the widest range of state citizens:~~

~~16.1.1. "by establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt"; W. Va. Code § 18B-1D-3(a)(2)(B); and~~

~~16.1.2. "by establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature ... or the Council." W. Va. Code § 18B-1D-3(a)(2)(B).~~

~~16.2. Findings: The Council finds:~~

~~16.2.1. Students attending community and technical colleges in West Virginia pay a significantly higher proportion of their family income for tuition and fees than do students in most other states.~~

~~16.2.2. The average tuition and fee rate for community and technical colleges in West Virginia exceeds the national average for public community and technical colleges.~~

~~16.2.3. Providing opportunities for adult students to enroll in community and technical college programs is a priority, and tuition and fee rates must remain affordable for this targeted population.~~

~~16.2.4. A delicate balance exists between the need for tuition increases to address increasing institutional operating costs and the impact on accessibility and affordability for students.~~

~~16.3. Approval of Tuition and Required Fee Adjustments.~~

~~16.3.1. Approval Guidelines. By January of each year, the Council shall establish guidelines and ranges for increases, for institutions to follow in proposing tuition and fee adjustments for Council approval.~~

~~16.3.2. In establishing guidelines, the Council may consider such items as:~~

~~16.3.2.1. The HEPI, or other appropriate inflationary benchmark, which new allocations to the institution's base budget for the next fiscal year did not offset;~~

~~16.3.2.2. Continued achievement of benchmarks in the institution compact;~~

~~16.3.2.3. Institution pursuit of the statewide compact for postsecondary education;~~

~~16.3.2.4. The per capita income of West Virginia families and their ability to pay for college;~~

~~16.3.2.5. Institution distance from peer equity levels; and~~

~~16.3.2.6. Institution funding per full-time equivalent student.~~

~~16.3.3. Each governing board shall provide the Council with an annual report that details:~~

~~16.3.3.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;~~

- ~~16.3.3.2. The proposed total increase in any tuition and fees for the next fiscal year;~~
- ~~16.3.3.3. The estimated number of students who will be charged the increased tuition and fees; and~~
- ~~16.3.3.4. The estimated increase in revenue to be generated from the increased tuition and fees.~~
- ~~16.3.4. All tuition and required fees shall be approved by the Council.~~
- ~~16.3.5. A governing board may propose tuition and required fee increases for resident students each fiscal year of up to four and three-quarters (4.75) percent. If existing tuition and fee rates at an institution are below the state average in required tuition and fees paid by all resident community and technical college students, a governing board may propose increases in excess of the four and three-quarters (4.75) percent.~~
- ~~16.3.6. A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Council.~~
 - ~~16.3.6.1. The Council annually shall inform each institution of the full cost of instruction per full-time equivalent student at that institution for the prior fiscal year. The full cost of instruction shall be calculated annually utilizing functional classifications in institution audited financial statements.~~
 - ~~16.3.6.2. Tuition and fee rates for non-resident students in the next fiscal year shall not be below the full cost of instruction per full-time equivalent student.~~
 - ~~16.3.6.3. The Council declares as a public policy goal entering into reciprocity agreements with nearby out-of-state higher education institutions whereby institutions make available programs and courses that are not available at the reciprocating institution.~~
 - ~~16.3.6.3.1. Governing boards may enter into reciprocal regional and interstate agreements, including agreements with the Southern Regional Education Board, that allow non-resident students to be charged resident tuition and fee rates, when the agreements are mutually~~

~~beneficial to the students of the participating states.~~

~~16.3.6.3.2. Reciprocity agreements shall be approved by the Council. Any request for approval shall include an estimate of the total participants from West Virginia and other states over the life of the agreement.~~

~~16.3.6.3.3. Tuition and required fees for non-resident students subject to reciprocity agreements shall be charged by community and technical colleges in a manner that is consistent with the Council approved reciprocity agreement.~~

~~16.3.7. Calculating increases. In calculating the percentage increase in tuition and required fees for purposes of the caps set out in section 15.3.5 of this rule, only those tuition and fees charged to all students may be considered.~~

~~16.3.8. Special Fees. Fees not charged to all students do not require Council approval. The Council, however, may take into consideration the amount of special fees charged and collected in approving tuition and fee required fee adjustments.~~



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Higher Education Policy Commission, Title 133,
Legislative Rule, Series 32,
Tuition and Fee Policy**

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

**SERIES 32
TUITION AND FEE POLICY**

§133-32-1. General.

1.1. Scope. This rule establishes the policy for the assessment of tuition and fees at West Virginia's undergraduate public institutions of higher education.

1.2. Authority. West Virginia Code ~~§18B-1-6~~ and §18B-10-1(d).

1.3. Filing Date. – ~~June 4, 2018.~~

1.4. Effective Date. – ~~June 4, 2018.~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect on ~~June 4, 2023.~~

§133-32-2. Definitions.

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §§ 18B-10-1c and 18B-19-2 apply to this rule in addition to the definitions set forth below:

~~2.1.a. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include charges other than sales from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers. Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public. "Administratively exempted schools" means those universities that are not statutorily exempted, but that have obtained administratively exempt status pursuant to W. Va. Code §18B-1-1f. Administratively exempted schools remain subject to the provisions of this rule.~~

~~2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal. Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowship programs. Auxiliary capital fees support entities that exist predominantly to furnish goods or services to students, faculty, or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, and other service centers.~~

~~2.3. Tuition and Required Educational and General Fees. Charges levied on all students of that class or category to support educational and general program services or optional charges levied for education and general services collected only from students using the service or from students for whom the services are made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.~~

~~2.4.1.b.—“Statutorily Exempted schools” The exempted schools are means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine. The statutorily exempted schools are exempt from the provisions of this rule.~~

~~2.5.—Full Cost of Instruction. Full cost of instruction includes the direct functional expenditures from each institution’s audit for both instruction and student services expenditures.~~

~~2.6.1.c.—“Higher Education Price Index or HEPI” means the inflation index designed specifically for use by institutions of higher education to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute, a branch of Commonfund, a nonprofit organization devoted to the management of college and university endowments.~~

~~2.7.—Median Family Income. Median household income is household income which the U.S. Census Bureau gathers and reports annually from data gathered by various surveys. Median is the statistical center of all reported households’ income and is presumed to be a better gauge of income as opposed to average family income means .~~

~~2.8.—Peer. A higher education institution located in another state that is similar to a West Virginia college or university.~~

~~2.9.1.d. Special “Supplemental Fee” means the Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, course, lab, parking, late payments, drug testing, instrument fees, and other services provided to students. Charging students these fees allows financial aid to be used as a form of payment for qualifying students. These fees do not include sales of merchandise and tickets, short term rental of space or equipment, and sales or services to the general public.~~

§133-32-3. Goals. [Reserved]

~~3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:-~~

~~3.1.a. To establish equity in the determination of tuition and fees charged to students.~~

~~3.1.b. To foster goals related to program completion for West Virginia students.~~

~~3.1.c. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.~~

~~3.1.d. To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.~~

§133-32-4. Tuition and Fee Adjustments Increases.

~~4.1. Objectives. The Commission, in partnership with the institutional governing boards, shall enhance education opportunities for the widest range of state citizens:-~~

~~4.1.a. By establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt; W. Va. Code §18B-1D-3(a)(2)(B); and~~

~~4.1.b. By establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Commission. W. Va. Code §18B-1D-3(a)(2)(B).~~

~~4.2.4.1. Approval of Tuition and Required Fee Adjustments Increases.~~

~~4.2.a. Approval Guidelines. A governing board may approve auxiliary, tuition, and required education and general, and capital fee increases for resident students each fiscal year of up to ten percent collectively. Over any three-year rolling period, the cumulative increase may not exceed seven percent per year. Except for mandatory auxiliary fees authorized by the Boards of Governors of exempted schools, auxiliary, tuition and required education and general and capital fee increases above ten percent collectively must be approved by the Commission. Governing boards are not required to approve sales prices. Tuition and fee increases for online courses are not subject to approval by the Commission. Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations.~~

~~4.2.a.1.4.1.a. For the purposes of this rule, calculation of ~~the increases~~ seven percent (7%) shall be based on all required tuition and fee rates charged to all West Virginia resident students.~~

~~4.2.a.2.4.1.b. Tuition increases related to fee simplification proposals that result in an expense neutral change for an in-state student shall not be counted toward the ten percent (10%) allowance exempt from Commission approval.~~

~~4.2.b. In establishing guidelines, ~~T~~The Commission shall communicate annually by February 28 to institutions benchmarks and guidelines for consideration of any increase above ~~five~~ seven percent (7%). The benchmarks and guidelines may include, but are not limited to, such items as:~~

~~4.2.b.1.a. The HEPI, or other appropriate inflationary benchmark, which new appropriations to the institution's base budget for the corresponding fiscal year did not offset;~~

~~4.2.b.2. Continued achievement of benchmarks in the institutional compact;~~

~~4.2.b.3. Institution pursuit of the statewide compact for postsecondary education;~~

~~4.2.b.4. The per capita income of West Virginia families and their ability to pay for college statewide and specifically as to the county(ies) in which 75% of the institution's in-state students reside;~~

~~4.2.b.5. Institutional distance of the sum of appropriations and tuition and fee revenues from peer equity levels as defined by the peer equity model;~~

~~4.2.b.6. Institutional and state funding per full-time equivalent student;~~

~~4.2.b.7.c. Most recent three-year history of tuition rates and increases;~~

~~4.2.b.8. d. Total sources of student generated revenue, including special fee and program fee rates;~~
and,

~~4.2.b.9.e. Other factors as requested or deemed relevant by the Commission ~~or in response to any new statutory language.~~~~

~~4.2.c.4.3. In responding to the guidelines and benchmarks provided by the Commission, By May 15 annually, each governing board shall provide the Commission with ~~an annual~~ a report that details:~~

~~4.2.e.1.4.3.a.~~ All tuition and fee rates presently charged and the ~~estimated~~ number of students currently being charged the tuition and fees;

~~4.2.e.2.4.3.b.~~ The proposed total increase in any tuition and fees for the next fiscal year;

~~4.2.e.3.4.3.c.~~ The estimated number of students who will be charged the increased tuition and fees;
and,

~~4.2.e.4.4.3.d.~~ The estimated increase in revenue to be generated from the increased tuition and fees.

~~4.2.d.~~ A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction. Governing boards may submit for approval institutional policies that support a clearly delineated public policy goal established by the Legislature or the Commission, including but not limited to, proposals to increase the total number of graduates from the institution, aid in economic development or to maximize available capacity on campus.

~~4.2.d.1.~~ Average full cost of instruction is based on the most recent financial statements. The average shall be determined by calculating the cost of instruction and student services per full-time equivalent student. This calculation shall be provided to the institutions annually.

~~4.2.d.2.~~ Institutional governing boards may choose to set non-resident tuition based on the average institutional full cost of instruction or the average full cost of instruction for the system as a whole.

§133-32-5. Expenditure.

~~5.1.~~ All tuition and fees collected may only be expended for the statutory purpose under which they were collected under. Institutions may expend auxiliary fees on the operations of residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, and other service centers.

~~5.2.~~ Institutions may spend auxiliary capital fees on debt service, information technology projects, capital projects and campus maintenance and renewal for residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores and other service centers and information technology systems.

~~5.3.~~ Institutions may expend capital fees on debt service, capital projects and facilities maintenance and renewal for facilities that support instruction, research, academic support, student services, institutional support, and operation and maintenance of the physical plant.

~~5.4.~~ Institutions may expend educational and general fees on instruction, research, academic support, student services, institutional support, operation and maintenance of the physical plant, scholarships and fellowships, and debt service on bonds. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.

~~5.5.~~ Institutions may charge supplemental fees to offset the cost of providing services such as, but not limited to, courses, labs, late payments, drug testing, musical instruments, art supplies, and other services provided to students.

§133-32-6. Refunds.

6.1. Each governing board must establish a refund policy for students who officially withdraw during a semester that ~~at minimum establishes refunds that complies with the following schedule; complies with~~

~~6.1.a. A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges;~~

~~6.1.b. A student who withdraws after completing more than ten percent (10%) through twenty five percent (25%) of the term is entitled to a refund of seventy five percent (75%) of the charges;~~

~~6.1.c. A student who withdraws after completing more than twenty five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges;~~

~~6.1.d. A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund; or~~

~~6.2. Each Board of Governors may establish a refund policy for students who officially withdraw during a semester that establishes refunds based upon the same calculations that the requirements that the United States Department of Education prescribes for the return of Title IV student financial aid funds.~~

§133-32-7. Deferred Payment Plans.

7.1. Each Board of Governors may establish a policy that provides deferred payment plan for students allowing them to pay their tuition and fees in installments. The deferred payment plan(s) must provide for full payment prior to the end of the academic term. This policy must address:

7.1.a. The interest rates, if any, that will be charged during the plan.

7.1.b. The type of installment plans available either institutionally or through a third party provider.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Higher Education Policy Commission, Title 133,
Legislative Rule, Series 42,
West Virginia Higher Education Grant Program**

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 42
WEST VIRGINIA HIGHER EDUCATION GRANT PROGRAM

§133-42-1. General.

1.1. Scope: This rule establishes guidelines and procedures that will direct the operation of the West Virginia higher education grant program, hereinafter referred to as the higher education grant program or grant program.

1.2. Authority: -- West Virginia Code §18B-1-6, §18C-5-1.

1.3. Filing Date: -- ~~July 5, 2017.~~

1.4. Effective Date: -- ~~August 5, 2017.~~

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

§133-42-2. Purpose and Effect.

2.1. The intent of the legislation creating the higher education grant program is to establish a broad-scale state grant program designed to guarantee that the most able and needy students from all sectors of the state are given the opportunity to continue their programs of self-improvement in approved institutions of higher education.

2.2. The provisions of this rule that are inconsistent with or different from current administrative procedures and practices will take effect for higher education grant awards upon the effective date of this rule.

§133-42-3. Definitions.

3.1. Academic Year. A period of time in which a full-time student is expected to complete the equivalent of at least two semesters or other approved academic term.

3.2. Commission. West Virginia Higher Education Policy Commission.

3.3. Cost of Attendance. The estimated total amount it will cost a student to attend college during an academic year, including tuition and fees; housing and food for the period of enrollment; books and supplies for education; travel costs directly related to attendance; child care expenses; costs related to a disability; and other costs determined by the educational institution to be educationally related.

3.4. Council. West Virginia Council for Community and Technical College Education.

3.5. Dependent Student. A student who is required to provide parental information on the free application for federal student aid because the student does not meet the criteria to be classified an

independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.

3.6. Expected Family Contribution (EFC). The amount that a family is expected to contribute toward a student's education costs under the federal need analysis. For an independent student, EFC is the same as student contribution. For a dependent student, EFC is the same as the total of student and parent contributions.

3.7. Financial Aid Package. The total amount of financial aid a student receives during an academic year.

3.8. Financial Need. The demonstrated need of an applicant for financial assistance to meet the actual costs of attending the eligible institution of choice. It is the calculated difference between a student's cost of attendance and his or her EFC.

3.9. Fiscal Year. A state fiscal year begins on July 1 and ends on June 30.

3.10. Free Application for Federal Student Aid (FAFSA). An application that students must complete in order to apply for most forms of financial aid, including the West Virginia higher education grant. The filing of a FAFSA by an individual who indicates West Virginia as his or her state of legal residence will be treated as an application for the West Virginia higher education grant.

3.11. Full-time Student. A student enrolled in a minimum of twelve undergraduate credit hours per semester or other comparable period at an institution with a non-traditional calendar.

3.12. Grant. Financial aid awarded to students that does not have to be paid back. For purposes of this rule, scholarships are included within the definition.

3.13. Higher Education Grant Program/Grant Program. Financial aid program described in West Virginia Code § 18C-5-1 et al. that provides grants to needy West Virginia residents.

3.14. Independent Student. A student who is not required to provide parental information on the free application for federal student aid because the student meets the criteria to be classified an independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.

3.15. Participating Institution. An institution that is eligible to participate in the West Virginia higher education grant program and for which a participation agreement is in place.

3.16. Participation Agreement. A document signed by the appropriate institution and Commission officials that specifies the rights and responsibilities of the institution and the Commission as they relate to participation in specific financial aid programs covered by that agreement.

3.17. Title IV. The section of the Higher Education Act of 1965, as amended, that pertains to federal student financial aid programs.

3.18. Undergraduate Student. A student who has not yet received a bachelor's degree and who is deemed an undergraduate student by the institution.

3.18.a. A student who is enrolled in a program that results in the awarding of a bachelor's and master's degree simultaneously and continues to meet the eligibility guidelines for the federal Pell grant

program shall be considered an undergraduate student if he or she is in his or her first four years of full-time post-secondary education and has not previously received a bachelor's degree.

3.18.b. A student who is enrolled in a doctor of pharmacy program shall be considered an undergraduate student if he or she has not previously received a bachelor's degree and is deemed an undergraduate student by the institution.

3.19. Unmet Financial Need. When the combination of a student's financial aid package and expected family contribution do not cover the cost of attendance.

3.20. Vice Chancellor for Administration. Commission employee statutorily charged with overseeing the West Virginia higher education grant program or his or her designee. Formerly known as the Senior Administrator.

§133-42-4. Administration.

4.1. The Vice Chancellor for Administration shall administer the higher education grant program under the general direction of the Chancellor for Higher Education and the Commission and in consultation with the Chancellor for Community and Technical College Education and the Council.

4.2. The Higher Education Student Financial Aid Advisory Board shall provide financial aid expertise and policy guidance to the Vice Chancellor for Administration.

4.3. The Vice Chancellor for Administration may use no more than three (3) percent of the amount appropriated each year for the higher education grant program for financial aid administration, award processing, and information dissemination.

§133-42-5. Institution Eligibility.

5.1. Students who attend the following types of institutions are eligible to receive a higher education grant:

5.1.a. Any public higher education institution identified in West Virginia Code §18B-1-2 and §18C-5-2; and

5.1.b. The following not-for-profit private higher education institutions in West Virginia: Alderson-Broaddus University, Appalachian Bible College, Bethany College, Davis & Elkins College, Ohio Valley University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University; and

5.1.c. Any other regionally or nationally accredited degree-granting institution of higher education in West Virginia, public or private, approved by the Vice Chancellor for Administration that has been licensed by the Commission or Council for a minimum of fifteen (15) years; under the provisions of West Virginia Code §§18B-2B-6 and 18B-2B-9; and

5.1.c.1. Salem International University shall be considered as an accredited institution that has been licensed by the Commission or Council for a minimum of fifteen (15) years.

5.1.d. Any non-West Virginia institution of higher education that is included within a reciprocal agreement with another state's grant program agency.

5.2. An institution otherwise eligible to participate in the higher education grant program under Section 5.1 of this rule shall be excluded from participating by the Vice Chancellor for Administration if:

5.2.a. The institution does not have a signed participation agreement in place; or

5.2.b. The institution has been deemed ineligible to participate in federal student financial aid programs by the United States Department of Education; or

5.2.c. The Commission determines, based upon audits and/or administrative site visits by Commission staff, that the institution has seriously mismanaged higher education grant or other state financial aid funds or lacks adequate institutional controls to manage such funds properly.

5.2.c.1. Any institution deemed ineligible to participate in the higher education grant program may appeal the decision in writing within fifteen (15) days of receiving notification to the Vice Chancellor for Administration. The Vice Chancellor for Administration, whose decision is final, shall issue a written decision upholding or reversing the initial decision within twenty (20) days of receipt of the appeal.

§133-42-6. Student Eligibility.

6.1. To be eligible for a higher education grant award, an applicant must:

6.1.a. Be a citizen of the United States; and

6.1.b. Have been a resident of West Virginia for one year immediately preceding the date of application for a grant or renewal of a grant; and

6.1.b.1. For dependent students, the legal residence of the parent(s) on the FAFSA shall be prima facie evidence of the student's legal residence.

6.1.b.2. Students may provide documentation that is approved by the Higher Education Student Financial Aid Advisory Board to determine a student's eligibility as a resident of West Virginia.

6.1.c. Have earned a high school diploma or passed a state approved high school equivalency exam; and

6.1.d. Plan to enroll at a participating Title IV-eligible institution as a full-time undergraduate student in a degree or certificate-producing program; and

6.1.e. Demonstrate academic promise (for new awards) or achievement (for renewal awards); and

6.1.f. Demonstrate financial need.

6.2. A new higher education grant applicant may satisfy the academic promise requirement in one of the following ways:

6.2.a. An applicant who has earned college credit after high school graduation or since passing the high school equivalency exam demonstrates academic promise if he or she has earned a cumulative college grade point average (GPA) of 2.0 or higher on a 4.0 scale as determined by the participating institution. The applicant must meet the institution's satisfactory academic progress standards.

6.2.b. An applicant who graduated from high school or passed the high school equivalency exam more than five years before enrollment or who has completed active military service and has not earned college credits after high school graduation or the high school equivalent before the date of enrollment demonstrates academic promise if he or she meets the admission requirements of the participating institution.

6.2.c. An applicant who has earned the high school equivalent within the last five years prior to enrollment and has not earned college credits after passing the high school equivalent exam demonstrates academic promise if his or her score meets the minimum score approved by the Higher Education Student Financial Aid Advisory Board.

6.2.d. An applicant who does not fall within the categories described in Sections 6.2.a., 6.2.b., or 6.2.c., demonstrates academic promise if he or she meets the admission requirements for a degree or certificate program of the participating institution and has a cumulative high school GPA of 2.0 or higher.

6.3. A renewal higher education grant applicant satisfies the academic achievement requirement if the student has maintained a minimum overall grade point average of 2.0, is meeting institution's academic progress requirement, and

6.3.a. If the student received a two-semester award, the student must have earned at least the minimum number of credit hours within the academic year as defined by the Higher Education Student Financial Aid Advisory Board for renewal; or

6.3.b. If the student received a single-semester award, the student must have earned at least the minimum number of credit hours within the academic year as defined by the Higher Education Student Financial Aid Advisory Board.

Institutions shall be responsible for determining whether renewal students have satisfied academic achievement requirements.

6.4. An applicant demonstrates financial need if:

6.4.a. He or she has a completed FAFSA on file with the United States Department of Education by a date to be determined by the Vice Chancellor for Administration in consultation with the Commission and Council; and

6.4.b. His or her cost of attendance is greater than the total of his or her EFC, as calculated from the FAFSA, and other financial aid; and

6.4.c. His or her expected family contribution does not exceed an amount set by the Commission and Council; and

6.4.d. He or she has completed verification if selected by the Central Processing System (CPS) or the institution.

6.5. A student is not eligible to receive a higher education grant award if he or she:

6.5.a. Previously has earned a bachelor's degree; or

6.5.b. Previously has received eight semesters of higher education grant awards; or

6.5.c. Is not deemed to be an undergraduate student by the institution; or

6.5.d. Owes the institution or the Commission for a higher education grant or other state financial aid overpayment unless the student has a written reimbursement plan in place.

6.6. Higher education grant awards shall be made without regard to the applicant's race, color, gender, religion, national origin, veteran's status, age or disability.

§133-42-6. Awards.

7.1. Maximum Award.

7.1.a. No higher education grant award may exceed the amount of tuition and required fees at the institution.

7.1.a.1. For purposes of this rule, West Virginia University's undergraduate health sciences students shall be treated as paying the same amount of tuition and required fees as all other West Virginia University undergraduate students.

7.1.b. For a student attending an institution identified in Section 5.1.d. of this rule, no higher education grant award may exceed the maximum grant award provided for in the reciprocity agreement.

7.2. Award Cycles.

7.2.a. The initial award cycle will occur preferably in April preceding the beginning of each academic year.

7.2.b. Additional award cycles may be made throughout the year as funds become available.

7.2.c. Any award cycle made after November 1 will be for second semester awards only.

7.3. Award Selection.

7.3.a. The Commission and the Council shall establish criteria to be used in award selection each year based on the amount of funding expected to be available to use for awards. In determining to whom to award and the size of awards, the Commission, Council and Vice Chancellor for Administration may consider applicants' relative levels of financial need, application filing dates, relative differences in tuition rates across institutions, and/or state policy priorities.

7.4. Award Use.

7.4.a. A student may use a higher education grant award to cover any part of his or her cost of attendance at an eligible higher education institution.

§133-42-8. Coordination of Higher Education Grant Program and Other Aid Programs.

8.1. All students seeking assistance through the higher education grant program must apply for assistance through the federal Pell grant program.

8.2. In no instance may a combination of the higher education grant and any other grants, including tuition and fee waivers, exceed demonstrated financial need as determined by the institution.

8.3. Funding Priorities.

8.3.a. To the extent permissible under federal law, grant resources available through federal student financial aid programs shall be utilized before a higher education grant award.

8.3.b. Grant resources available through other state student financial aid programs shall be utilized before a higher education grant award.

8.4. Students may not receive funding from both the higher education grant program and any component of the higher education adult part-time student (HEAPS) grant program during the same payment period.

§133-42-9. Post-Award Changes.

9.1. If a higher education grant recipient transfers from one participating institution to another participating institution, the grant is transferable with the approval of the Vice Chancellor for Administration or his or her designee.

9.2. If a higher education grant recipient's EFC increases after an award has been made, the award shall be withdrawn if the new EFC exceeds the maximum EFC set by the Commission and Council in any given year.

9.3. If a higher education grant recipient terminates enrollment during the fall semester, the scheduled spring award will be reserved for the student by the grant program staff unless notified otherwise by the institution.

9.4. If a higher education grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the Commission by the institution in accordance with the Commission's rule for issuing refunds pursuant to the provisions of W.Va. Code § 18C-5-1 et seq. If the recipient also received federal financial aid, the institution must abide by the refund policy associated with Title IV funds. The institution is responsible for returning the unused portion of the grant even if the student does not request a refund from the institution.

§133-42-10. Payments.

10.1. Payment of higher education grant awards shall be made directly to the institution.

10.2. An institution may not receive a payment unless the institution has completed the previous year's reconciliation process and returned any prior-year balance payable to the Commission.

§133-42-11. Waivers.

11.1. A recipient may request a waiver of academic progression if the recipient withdrew from all courses during the semester as a result of:

11.1.a. Serious illness or major injury involving the student or an immediate family member; or

11.1.b. Death of an immediate family member; or

11.1.c. Other comparable extenuating circumstance.

11.2. All waiver requests must be submitted to the Director of State Financial Aid Programs for approval.

§133-42-12. Appeals.

12.1. An applicant or institution may appeal in writing the decline of an initial award or renewal award or any other decision within fifteen (15) days of receiving notification to the Director of State Financial Aid Programs. The Director may consult with the appeals committee comprised of financial aid staff, and the Director shall issue a written decision upholding or reversing the initial decision within fifteen (15) days of receipt of the appeal.

12.2. The applicant may appeal the director's decision to a review committee appointed by the Commission.

12.3. Any appeal to the review committee must be filed within fifteen (15) days of notification to the applicant that his or her initial appeal was denied. The review committee may require additional evidence or materials be submitted. The review committee shall issue a written decision upholding or reversing the Director's decision within twenty (20) days of receipt of the appeal. The decision of the review committee is final.

12.4. Any applicant appeal of a decision concerning satisfactory academic progress that relates to credit hour completion shall be referred to the institution for resolution consistent with institution procedures established for this purpose.

12.5. Any appeal made should set forth in detail the grounds for the appeal. The decision rendered at each level shall address in writing each ground raised.

§133-42-13. Accounting, Reporting, and Auditing Requirements.

13.1. Before the end of each fiscal year, each institution's financial aid office must reconcile its higher education grant records with:

13.1.a. The Commission's records of higher education grant awards and disbursements; and

13.1.b. The institution's business office records of state grant disbursements.

13.2. All participating institutions may be required to provide reports, which may include student level data, to the Commission from time to time, including the United States Department of Education's Fiscal Operations Report and Application to Participate (FISAP) and the West Virginia Higher Education Policy Commission's Annual Student Financial Aid Report.

13.3. Participating institutions under Sections 5.1.b, 5.1.c, and 5.1.d of this rule shall provide the Vice Chancellor for Administration with an audited financial statement annually. These statements shall be treated as confidential trade secrets and shall not be subject to Freedom of Information Act requests.

13.4. All participating institutions may be subject to financial aid audits.

§133-42-14. Authority of Vice Chancellor for Administration to Enter into Reciprocal Agreements with Other States Concerning Grants.

14.1. The Vice Chancellor for Administration may enter into reciprocal agreements with state grant and grant program agencies in other states that provide financial assistance to their residents attending institutions of higher education located in West Virginia.

14.2. The Vice Chancellor for Administration may permit West Virginia residents to use the higher education grant under Section 14.1 of this rule to attend institutions of higher education in such other states.

14.3. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in Section 6 of this rule.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Higher Education Policy Commission, Title 133,
Legislative Rule, Series 52,
Annual Reauthorization of Degree-Granting Institutions**

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

**SERIES 52
ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS**

§133-52-1. General.

1.1. Scope. – This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees above the associate level.

1.2. Authority. – West Virginia Code § 18B-4-7.

1.3. Filing Date. – ~~April 8, 2022.~~

1.4. Effective Date. – ~~June 5, 2022.~~

1.5 Sunset Date. – This rule shall terminate and have no further force or effect on ~~June 5, 2027.~~

§133-52-2. Purpose.

2.1. The West Virginia Higher Education Policy Commission (Commission), through a process of granting authorization and annual reauthorization of baccalaureate and graduate level higher education institutions operating in West Virginia, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers ~~to within~~ West Virginia ~~residents~~. An institution authorized by the Commission ~~shall be~~ is required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.

2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution’s credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.

2.3. The Commission is responsible for the authorization of any institution, association, or organization external to or within the State which desires to offer postsecondary programs or credit-bearing ~~academic~~ courses ~~of higher learning~~ in West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term “academy,” “college,” “institution,” “university” or similar title, hereafter referred to as “institution.”

2.4. The Commission is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs above the associate level except for those institutions exempted by the Commission under Section 4 of this rule. The process of conferring reauthorization by the Commission includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.

2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Commission on all items related to reauthorization prescribed in this rule.

2.6. ~~While~~ The provisions of this rule apply ~~directly~~ to the annual reauthorization of any private institution in West Virginia which offers degrees above the associate level, ~~the criteria for annual reauthorization also apply to public higher education institutions that offer degrees above the associate level in the state, and are under the purview of the Commission with the exception of Marshall University and West Virginia University.~~

2.7. ~~While exempt from annual reauthorization, Marshall University and West Virginia University~~ West Virginia's public universities shall remain continuously authorized to operate unless the Legislature takes affirmative action to suspend or discontinue its operations; *Provided*, That such public universities shall provide information delineated in Section 5.4 to the Commission by November 1 of each year upon request or as needed for reporting purposes.

2.8. The Commission shall make available information on institutional performance of all public institutions located in West Virginia, including Marshall University and West Virginia University, on the Commission's website and through other appropriate venues.

§133-52-3. Definitions.

3.1. "Accreditation" means a review of the quality of higher education institutions and programs to ensure that such institutions meet acceptable levels of quality, which is status attained by the institution through voluntarily meeting standards set by a nongovernmental entity (i.e., an accrediting organization recognized by the U.S. Secretary Department of Education) as well as federal and State government agencies authorized to set such standards.

3.2. "Authorization" means the status attained by the institution that allows the institution to offer postsecondary programs and courses within the State of West Virginia. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

3.3. "Chancellor" means the Chancellor for Higher Education as that term is defined by W. Va. Code §18B-2-1 or his or her designee.

3.34. "Commission" means the West Virginia Higher Education Policy Commission.

3.45. "Council" means the West Virginia Council for Community and Technical College Education.

3.56. "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.

3.6. ~~"Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.~~

3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary level which:

3.7.a. Offers courses or programs of study or instruction which lead to or which may reasonably

be understood to be applicable toward a baccalaureate, masters, doctorate, or other specialized certification or degree designation above the ~~baccalaureate~~ associate's degree level; or

3.7.b. Operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

3.7.c. Uses the term "college" or "university," or words of like meaning in its name or in any manner in connection with its academic affairs or business.

3.8. "Physical presence" means an actual presence in the State, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational services; dissemination of educational credentials; or enrollment, solicitation, or advertising. "Physical presence" ~~as further outlined for purposes of authorization~~ shall include but not be limited to:

3.8.a. An instructional site within the state;

3.8.b. Dissemination of an educational credential from a location within the State.

3.8.c. An agent, whether compensated or not, who is utilized for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or performing any other activity on behalf of the sponsoring institution;

3.8.d. Advertising, promotional material, or public solicitation in any form that targets West Virginia residents through distribution or advertising in the State;

3.8.e. Instructional delivery that receives assistance from any other organization within the State in that delivery; or

3.8.f. Clinical experiences, internships, or other similar curricular requirements.

Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Commission ~~and~~ or West Virginia local school districts.

3.9. "Reauthorization" is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for in West Virginia residents. This status is granted by the Commission when the institution demonstrates compliance with the requirements for such status.

3.10. "Religious, theological, or faith-based institution" means a postsecondary institution that offers no degree programs other than those specifically related to the institution's doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.

~~3.11. "Unearned tuition" means the anticipated amount of tuition revenue minus refunds that will be generated within a one year time frame of the institution's authorized operation in West Virginia. "Unearned tuition" for the application of annual reauthorization is the amount of tuition revenue minus refunds that were received during the previous year.~~

§133-52-4. Exemptions.

4.1. Any institution fully authorized by the Commission to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization except as

provided in subsection 4.2.

4.2. The following institutions shall be exempt from the provisions of this rule:

4.2.a. Correspondence, business, occupational and trade schools which are regulated under West Virginia Code provisions §18B-2B-9 and ~~West Virginia Council for Community and Technical College Education, Title 135, Legislative Rule, Series 35~~ on correspondence 135 C.S.R. 35, *Business, Occupational and Trade Schools*.

4.2.b. Out-of-state institutions:

4.2.b.1. Offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the State institution;

4.2.b.2. Offering a short course or seminar in which the instruction for the segment takes no more than 20 classroom hours and is not for college credit;

4.2.b.3. Offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;

4.2.b.4. Offering courses or programs at a location in West Virginia by the authority of the Commission for a designated period of time; or

4.2.b.5. Offering online courses or programs with Commission approval for a specified period of time.

4.2.c. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.

4.2.d. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in ~~Series 20133 C.S.R. 20, *Initial Authorization of Degree-Granting Institutions*~~, and offers no degree programs other than those specifically related to the institution's doctrine.

4.2.e. Those institutions subject to annual reauthorization by the West Virginia Council for Community and Technical College Education, ~~under its Title 135, Series 52~~ pursuant to W. Va. Code § 18B-4-7 and 135 C.S.R. 52, *Annual Reauthorization of Degree-Granting Institutions*.

§133-52-5. Annual Reauthorization.

5.1. All authorized institutions, except West Virginia public universities and those previously exempted in subsection 4.2 of this rule, must annually submit a reauthorization application report in a format prescribed by ~~Commission staff~~ the Chancellor. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.

5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.

5.3. Upon request by the Commission, authorized institutions must provide documentation necessary

to assess the performance of the institution.

5.4. The reauthorization application ~~must~~ shall include the following:

- 5.4.a. Name and address of the institution of higher education;
- 5.4.b. Chief executive officer's name, title, address, phone number, ~~fax number~~, and email address;
- 5.4.c. Institutional liaison's name, title, address, phone number, ~~fax number~~, and email address;
- 5.4.d. Verification of current accreditation status and copy of latest annual ~~HLC/NCA~~ Higher Learning Commission Institutional Update Report;
- 5.4.e. Full and part-time student enrollments of resident and non-resident students for each term during the most recent reporting year;
- 5.4.f. A current schedule of fees and charges for tuition;
- 5.4.g. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year;
- 5.4.h. Graduation rates for undergraduate degree-seeking first-time, full-time freshmen for the most recent graduating six-year cohort year;
- ~~5.4.i. Data on student transfers into and out of the institution for the most recent year;~~
- 5.4.j.i. Licensure pass rates for completion of all professional programs, e.g., education, nursing, and engineering, for the most recent year;
- ~~5.4.k. Student loan cohort default rates for the most recent year available;~~
- ~~5.4.l. Campus crime statistics for the most recent reporting year available;~~
- ~~5.4.m. Number of student, staff, and faculty grievances filed during the most recent reporting year;~~
- 5.4.j. A plan for the retention, custody, and retrieval of student records, including but not limited to academic transcripts, financial aid documents, international student forms, and tax information, in the event of closure of the institution or discontinuance of service. The plan shall include a method by which students and alumni of the institution will be able to retrieve such records upon request; and
- 5.4.n.k. Any additional information or data as deemed necessary.

5.5. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.

5.6. Upon receipt of the annual reauthorization application, Commission staff shall ~~convene a compliance review committee to review the submitted documentation and render a recommendation to the Commission. The Chancellor may convene a compliance review committee to evaluate unique circumstances or possible issues associated with an institution's reauthorization application. The committee will analyze the information and advise the Chancellor regarding future action. The committee shall may~~ be composed of:

5.6.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for authorization;

5.6.b. Persons who are representative of both public and private institutions;

5.6.c. Members of the Commission staff; ~~The Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee, and/or~~

5.7.d. Any other person(s) deemed necessary by the Chancellor.

5.7. Upon review of documentation ~~and recommendation of the compliance review committee, the Chancellor shall recommend to the Commission that~~ institutions that are found to be in compliance with generally accepted parameters of operation ~~are recommended to the Commission for reauthorization be~~ reauthorized.

5.8. If ~~the compliance review committee finds~~, after review of required documentation, Commission staff find that the institution is not in compliance with generally accepted parameters of operation, ~~the committee~~ the Chancellor may request additional documentation for review.

5.9. Each institution shall provide, ~~at the request of the compliance review committee,~~ all information the ~~committee~~ Chancellor considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring degrees. ~~Information may include, but is not limited to, the following:~~

~~5.9.a. Institutional information.~~

~~5.9.a.1. Copies of articles of incorporation, charter, constitution, and by laws for the initial reporting year, and changes only for reporting in subsequent years;~~

~~5.9.a.2. Copy of any articulation agreement the institution has with a West Virginia higher education institution entered into or changed within the last year;~~

~~5.9.a.3. Copy of the institution's current mission and goals statement for the initial reporting year, and changes only for reporting in subsequent years;~~

~~5.9.a.4. Copy of the current institutional catalog;~~

~~5.9.a.5. Copies of current promotional and recruitment materials and advertisements provided or distributed to West Virginia residents.~~

~~5.9.b. Accreditation information.~~

~~5.9.b.1. If the institution is accredited by a regional accrediting agency, verification of the accreditation status, including any correspondence within the last year; and~~

~~5.9.b.2. If the institution is accredited by a national accrediting agency or any of its academic programs are accredited by a program accrediting agency, verification of the accreditation status.~~

5.9.ea. Program information.

5.9.ea-1. A list of current degree programs offered in West Virginia by the institution;

~~5.9.ea.2. Results of any external degree program evaluation during the last year, if any;~~

~~5.9.ea.3. A list of any degree programs that have ceased to be offered during the previous year;~~

~~5.9.c.4. Identification of methods used to assess student achievement;~~

~~5.9.c.5. Results of the most recent assessment of student achievement.~~

~~5.9.d. Faculty information.— A list of current full-time and part-time faculty with highest degree held, degree field(s), and institution conferring highest degree.~~

~~5.9.eb. Financial information.~~

~~5.9.eb.1. The latest financial statement for the most recent fiscal year compiled and audited by an independent certified public accountant, including any management letters provided by the independent auditor.~~

~~5.9.f. Facilities information, if applicable.— Verification of compliance with all applicable local, State, and federal safety and fire codes.~~

~~5.9.gc. Student information.~~

~~5.9.g.1. The institution's policies about student admissions, evaluation, suspension, and dismissal for the initial reporting year, and changes only for reporting in subsequent years;~~

~~5.9.g.2c.1. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges;~~

~~5.9.g.3c.2. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years;~~

~~5.9.g.4. The institution's policy about granting credit for experiential learning, including prior education, training, and experience for the initial reporting year, and changes only for reporting in subsequent years;~~

~~5.9.g.5. The institution's policy on post-graduation placement, if any, and data on placements for the most recent year;~~

~~5.9.g.6. A list of all student grievances for the most recent year as well as the nature and disposition of each.~~

~~5.9.h. Other information.~~

~~5.9.h.1. Information related to compliance with federal or state laws and regulations that require reporting to the public, students, employees, or federal or state agencies;~~

~~5.9.h.2. Information on how the institution ensures accuracy in its usual publications such as the catalog and institutional brochures and fair representation by recruiters and agents.~~

~~5.9.id. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by~~

Commission staff.

5.10. On-site review.

5.10.a. ~~The compliance review committee~~ Commission staff, at ~~it's~~ the Chancellor's discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in ~~Series 20133 C.S.R. 20, Initial Authorization for Degree-Granting Institutions~~. The ~~committee~~ Commission staff may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data ~~to the committee as necessary to render a thorough and comprehensive assessment~~. When possible, the visit will be scheduled at a time which is mutually convenient to the institution and ~~the committee~~ Commission staff. The institution shall pay the reasonable expenses associated with the compliance review visit.

5.10.b. Following review of submitted documentation and/or any requisite site visit, the ~~compliance review committee~~ Commission staff will prepare an analysis of the findings.

5.10.c. Commission staff will provide a draft of ~~a staff~~ its report prepared in accordance with this section ~~will be provided~~ to the institution for comment and correction of factual errors. The institution may provide the Commission a response to the report within 10 working days of receipt of the report. The institutional comments will be included with the ~~compliance review committee report~~ Chancellor's recommendation presented to the Commission.

5.10.d. ~~The compliance review committee~~ Chancellor will develop a recommendation for the Commission regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended for reauthorization.

5.10.e. If the Chancellor finds that an institution ~~which is~~ does not ~~found to~~ meet the generally accepted higher education state standards of quality, ~~will be the Chancellor will~~ will be the Chancellor will recommended to the Commission ~~for denial of that it deny~~ reauthorization of the institution. Once reauthorization is denied, the institution is subject to the authorization requirements, process, and review in ~~Series 20133 C.S.R. 20, Initial Authorization of Degree-Granting Institutions~~, in order to seek authorization to operate within West Virginia.

5.10.f. An institution submitting an annual reauthorization report ~~adjudged~~ determined by the Commission as meeting the standards for reauthorization shall retain its authorized status for the ~~current~~ following year.

§133-52-6. Public Institutions and Annual Reauthorization. [Reserved]

~~6.1. All public institutions, except Marshall University and West Virginia University, under the purview of the Commission shall apply for annual reauthorization and shall meet the conditions for reauthorization as provided in section 5 of this rule.~~

~~6.2. The Commission shall make available to the public information on matters of institutional performance for all public institutions under its purview, including Marshall University and West Virginia University, as provided in section 2 of this rule.~~

§133-52-7. Dissemination of Institutional Information.

7.1. The Commission shall make available to the public information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Commission's website or disseminated through other appropriate venues.

7.2. The Commission office shall maintain a list of institutions authorized to grant degrees and shall make such list available to the public.

§133-52-8. Change of Ownership and Control.

8.1. Authorization of an institution terminates ~~at the time~~ when a change in ownership ~~resulting in a change of~~ or control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within 10 business days after the change of ownership ~~that resulted in a change of~~ or control. Such institution shall submit an application reflecting the change in ownership and control and an application fee of \$500.

8.1.a. If an institution files an application requesting approval of a change of ownership and control more than 10 business days after ~~the such~~ change of ownership ~~resulting in a change of control~~ takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in ~~Series 20~~ 133 C.S.R. 20, Initial Authorization for Degree-Granting Institutions.

8.1.b. An authorized institution shall notify the Commission of any anticipated change in ownership ~~that results in a change of~~ or control at least 30 days prior to the change in ownership and control.

§133-52-9. Reauthorization Fees.

9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.

9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization or suspension or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.

9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission. ~~The Commission may adjust all fee charges as deemed necessary.~~

9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

§133-52-10. Sanctions and Termination of State Authorization.

10.1. Intermediate sanctions. – If an institution fails to comply with the provisions for reauthorization in this rule, the Commission may progressively impose one or more of the following sanctions.

10.1.~~4~~a. Require the submission and implementation of an improvement plan to address or correct problems identified by the Commission; and/or

10.1.~~2~~b. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.

10.1.2.b.1. In addition to the foregoing, the Commission may suspend the ability of an institution to enroll future students and deny reauthorization for the next year if any of the following occur:

10.1.2.b.1.a. The institution fails to provide to the Commission an approved teach-out plan within the requisite time after being notified by its accreditor or the Commission that it needs to do so;

10.1.2.b.1.b. The institution continuously fails to provide essential student services in a timely manner, including without limitation processing transcript requests or financial aid; or

10.1.2.b.1.c. The institution fails to comply with State or federal wage and hour laws or employee compensation contracts or the statutory requirements regarding any required subscription to the Unemployment Compensation Fund or workers' compensation insurance, the payment of premiums or other charges as required to maintain such coverage, the timely filing of payroll reports, or the maintenance of adequate deposits.

10.2. Termination of state authorization.

10.2.a. An institution shall provide the Commission with a copy of any notice, warning, suspension, revocation, or other adverse action received from any national or regional accrediting agency within five business days of receipt of such notice. The Commission shall terminate the authorization of any institution that fails to fulfill any requirements prescribed by its accreditor within timeframes established by the accreditor.

10.2.b. The Commission may for good cause suspend, withdraw, or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any other appropriate action per ~~Series 20~~ 133 C.S.R. 20, Initial Authorization of Degree-Granting Institutions.

10.2.c. The Commission may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or submits an incomplete or unsatisfactory reauthorization application, as determined by Commission staff ~~and referenced in Section 5 of this rule~~ in accordance with the provisions of this rule.

10.2.d. The Commission shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:

10.2.d.1. Failed to maintain the minimum standards for conferring degrees;

10.2.d.2. Refused or ~~willingly~~ failed to provide information to the Commission in a manner and within a reasonable timeframe as established by the Commission; or

10.2.d.3. ~~Willfully~~ Provided false, misleading, or incomplete information to the Commission.

10.2.e. The Commission shall terminate the authorization of an institution authorized as a religious, theological, or faith-based college that fails to ~~continue to~~ meet the criteria for a religious institution ~~shall have its authorization terminated.~~ The Commission shall notify the institution ~~shall be so notified of its action~~ in writing; and allow a phase-out period of not more than one additional academic term ~~shall be permitted.~~ The institution may file an appeal to the Commission ~~may be filed~~ within 10 business days of its receipt of the written notice. In the absence of a timely appeal, the termination shall be final.

10.3. Notification to cease offering degrees or degree credits. – If an institutions that are not authorized by the Commission but offers degrees and/or degree credits in West Virginia, the Commission shall be notified notify the institution by certified mail that they it shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if the institutions fail to comply.

§133-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.

11.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this State, its chief executive officer shall notify the Commission of the date of discontinuance and the name and address of the agency where records will be maintained.

11.2. ~~Records shall be~~ Institutions shall permanently maintained ~~and their records so that authorized parties may obtain~~ copies ~~may be obtained by authorized parties thereof~~. Such records shall include, but not be limited to, information pertaining to the admission of each student and former student and the educational record of each student and former student. Institutions shall retain financial aid records of each student and former student ~~shall be retained consistent in accordance~~ with State and federal ~~regulations law~~.

11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption and inform the Commission of the following:

11.3.a. The planned date of termination of postsecondary education operations;

11.3.b. The planned date for the transfer of student records;

11.3.c. ~~confirmation of~~ The name and address of the organization to receive and hold the student records, if different from the institution itself; and

11.3.d. The official at the organization ~~receiving the student records~~ who is the institution has designated as the records custodian to provide official copies of records or transcripts upon request.

11.4. Any institution that fails to comply with the requirements of this section forfeits consideration by the Commission of any application for authorization or reauthorization.

§133-52-12. Notification: Appeals.

12.1. Once the Commission has received and verified the accuracy of information constituting any of the grounds for adverse action identified in ~~section 10~~ of this rule, the Commission shall notify the institution and its owner in writing of its intent to recommend denial, ~~or suspension, or revocation~~ of reauthorization or other adverse action and the grounds for such recommendation.

12.1.a. The owner of the institution may, within 10 business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced by the Chancellor within 20 business days of such request at ~~the Chancellor's office or at such other a location convenient to the parties and witnesses as may be~~ designated by the Chancellor.

12.1.b. The hearing shall be conducted by the Chancellor ~~or his/her designee~~, pursuant to the ~~procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia~~ West Virginia Administrative Procedures Act, W. Va. Code § 29A-5-1, et seq.

12.1.c. The Chancellor ~~or his/her designee~~ may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.

12.1.d. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor ~~or his/her designee~~ shall be deemed unchallenged by the institution and reported to the Commission for final action.

12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization

to operate the institution or other adverse action must be established by ~~clear and convincing evidence~~ a preponderance of the evidence.

12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

12.4. The rules of privilege recognized by the law of this state shall be followed.

12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor ~~or his/her designee~~; and may cross-examine witnesses called by the Commission in support of the charges.

12.7. The hearing shall be open to the general public.

12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions, and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. All recorded materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

12.10. The Commission may call witnesses to testify in support of charges, ~~and~~ may present such other evidence to support its position, and may cross-examine witnesses called by the ~~charged party~~ institution in support of its position.

12.11. All parties shall have the right to offer opening and closing arguments.

12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor ~~or his/her designee~~ by upon appropriate notice to all parties.

12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least 10 business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.

12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor ~~or his/her designee~~.

12.15. At any time prior to the hearing or thereafter, the Chancellor ~~or his/her designee~~ may hold conferences for the following purposes:

12.15.a. To dispose of procedural requests, pre-hearing motions, or similar matters;

12.15.b. To simplify or settle issues by consent of the parties; or

12.15.c. To provide for the informal disposition of the case by stipulation or agreement.

12.16. The Chancellor ~~or his/her designee~~ may cause such conferences to be held on ~~it's~~ the Commission's own motion or by the request of a party.

12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

~~12.18. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code §29A-5-1(b).~~

~~12.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 12.18 of this rule must be received by the Commission no later than ten (10) business days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code §29A-5-1(b).~~

~~12.2018.~~ Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code § 29A-5-3. Such orders shall be entered within 60 days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.

~~12.2119.~~ Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor ~~or his/her designee~~ and must be approved by a majority of the Commission by vote at a regular meeting before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or ~~his or her~~ its attorney of record, if any, within 10 business days after entry by the Commission by personal service or by registered or certified mail.

~~12.2220.~~ The final order may suspend, withdraw, or revoke the authorization of the institution; place the institution on probation; order refunds to students; order forfeiture of the institution's surety bond ~~and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute~~; or order any other action deemed appropriate by the Commission, ~~up to and including payment of loans, interest and other charges in connection with institution loans caused a student by the institution's violation of this rule.~~

~~12.2321.~~ All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code § 29A-5-1, et seq.

~~12.2422.~~ Any relief a student believes he or she was not rightfully awarded by the Commission pursuant to this rule may be pursued in any other appropriate forum. Nothing in this rule precludes an institution's current or former students or current or former employees from pursuing any remedy at law or equity that may be available to them based on the institution's actions or failures to act in accordance with this rule or any other provision of applicable law.



WEST VIRGINIA
Community & Technical
COLLEGE SYSTEM

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Council for Community and Technical College
Education, Title 135, Legislative Rule, Series 52,
Annual Reauthorization of Degree-Granting Institutions**

TITLE 135

LEGISLATIVE RULE

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 52

ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS

§135-52-1. General.

1.1. Scope. -- This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees not above the associate level.

1.2. Authority. -- W. Va. Code §18B-4-7.

1.3. Filing Date. -- ~~April 5, 2022~~

1.4. Effective Date. -- ~~June 5, 2022~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~June 5, 2027~~.

§135-52-2. Purpose.

2.1. The West Virginia Council for Community and Technical College Education (Council), through a process of granting authorization and annual reauthorization of education institutions operating in West Virginia that provide instruction up to and including the associate degree level, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers ~~to~~ within West Virginia ~~residents~~. An institution authorized by the Council ~~shall be~~ is required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.

2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.

2.3. Authorization is required for all postsecondary providers that offer certificates, degrees, or instruction at the associate degree level or below, and entities that use the term "academy," "college," "institution," "university" or similar title, hereafter referred to as "institution," unless otherwise exempt.

2.4. The Council is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs at or below the associate degree level. The process of conferring reauthorization by the Council includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.

2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Council on all items related to reauthorization prescribed in this rule.

2.6. ~~While~~ The provisions of this rule apply ~~directly~~ to the annual reauthorization of any private

institution in West Virginia which offers degrees at or below the associate level, ~~the criteria for annual reauthorization also apply to public higher education institutions that offer degrees at or below the associate level in the state, and are under the purview of the Council.~~

2.7. The Council shall make available information on institutional performance of all public institutions located in West Virginia on the Council's website and through other appropriate venues.

2.8. West Virginia's public community and technical colleges shall remain continuously authorized to operate unless the Legislature takes affirmative action to suspend or discontinue its operations; *Provided*, That such public community and technical colleges shall provide information delineated in Section 5.4 to the Council upon request or as needed for reporting purposes.

§135-52-3. Definitions.

3.1. "Accreditation" means a review of the quality of higher education institutions and programs to ensure that such institutions meet acceptable levels of quality, which is status attained by the institution through voluntarily meeting standards set by a nongovernmental entity (i.e., an accrediting organization recognized by the U.S. Secretary Department of Education) as well as federal and State government agencies authorized to set such standards.

3.2. "Authorization" means the status attained by the institution that allows the institution to offer postsecondary programs and courses within the State of West Virginia. This status is granted by the Council for Community and Technical College Education when the institution demonstrates compliance with the requirements for such status.

3.3. "Chancellor" means the Chancellor for Higher Education as that term is defined by W. Va. Code § 18B-2-1 or his or her designee.

~~3.3-4.~~ "Commission" means the West Virginia Higher Education Policy Commission.

~~3.4-5.~~ "Council" means the West Virginia Council for Community and Technical College Education.

~~3.5-6.~~ "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program at the associate level.

~~3.6. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.~~

3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:

3.7.a-1. offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward an associate or other specialized certification/degree designation at or below the associate level; or

3.7.b-2 operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

3.7.e-3 uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

3.8. “Physical presence” means an actual presence in the state, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational service; dissemination of educational credentials; enrollment, solicitation or advertising. Physical presence ~~as further outlined for purposes of authorization~~ shall include but not be limited to:

3.8.a.1 An instructional site within the state.

3.8.b.2 Dissemination of an educational credential from a location within the state.

3.8.e.3 An agent, whether compensated or not, who is utilized for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or performing any other activity on behalf of the sponsoring institution.

3.8.d.4 Advertising, promotional material or public solicitation in any form that targets West Virginia residents through distribution or advertising in the state.

3.8.e.5 Instructional delivery that receives assistance from any other organization within the state in that delivery.

3.8.f.6 Clinical experiences, internships, or other similar curricular requirement.

Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Council ~~and~~ or West Virginia local school districts.

3.9. “Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses ~~for~~ in West Virginia ~~residents~~. This status is granted by the Council when the institution demonstrates compliance with the requirements for such status.

3.10. “Religious, theological, or faith-based institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.

~~3.11. “Unearned tuition” means the anticipated amount of tuition revenue minus refunds that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia. “Unearned tuition” for the application of annual reauthorization is the amount of tuition revenue minus refunds that was received during the previous year.~~

§135-52-4. Exemptions.

4.1. Institutional exemption is subject to annual review and/or revocation any time the activity deviates from the original determination factors for exemption. An institution which claims to be exempt under the provisions of this section must submit such information as may be required by the Council to determine whether the institution is exempt from reauthorization.

4.2. Any institution fully authorized to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization.

4.3. The following institutions shall be exempt from the provision of this rule:

4.3.a.1. Out-of-state institutions:

4.3.a.1.+a. offering courses through brokering or other collaborative arrangements with a West

Virginia public institution of higher education and which support programmatic offerings of the state institution;

4.3.1.a.2b. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, and is not for college credit;

4.3.1.a.3c. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;

4.3.1.a.4d. offering courses or programs at a location in West Virginia by the authority of the Council for a designated period of time; or

4.3.1.a.5e. offering online courses or programs with Council approval for a specified period of time.

4.3.b2. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.

4.3.e3. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in ~~Series 20135 C.S.R. 20~~, *Initial Authorization of Degree-Granting Institutions*, and offers no degree programs other than those specifically related to the institution's doctrine.

§135-52-5. Annual Reauthorization.

5.1. All institutions authorized by the Council at the associates level must annually submit a reauthorization application report in a format prescribed by ~~Council staff~~ the Chancellor. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.

5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.

5.3. Upon request by the Council, authorized institutions must provide documentation necessary to assess the performance of the institution.

5.4. The reauthorization application ~~must~~ shall include the following:

5.4.a1. Name and address of the institution of higher education.

5.4.b2. Chief executive officer's name, title, address, phone number, ~~fax number~~, and email address.

5.4.e3. Institutional liaison's name, title, address, phone number, ~~fax number~~, and email address.

5.4.d4. Verification of current accreditation status and copy of latest annual ~~HLC/NCA~~ Higher Learning Commission Institutional Update Report or other USDE-recognized regional accrediting agency.

5.4.e5. Full and part-time student enrollments of resident and non-resident students for each term and/or period of instruction during the most recent reporting year.

5.4.f6. A current schedule of fees and charges for tuition.

5.4.g~~7~~. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year.

5.4.h~~8~~. Graduation rates for undergraduate degree-seeking first-time, full-time students for the most recent graduating three-year cohort year.

~~5.4.i. Data on student transfers in to and out of the institution for the most recent year.~~

5.4.j~~9~~. Licensure pass rates for completion of all professional programs, e.g., allied health, for the most recent year.

~~5.4.k. Student loan cohort default rates for the most recent year available.~~

~~5.4.l. Campus crime statistics for the most recent reporting year available.~~

~~5.4.m. Number of student, staff, and faculty grievances filed during the most recent reporting year.~~

5.4.10. A plan for the retention, custody, and retrieval of student records, including but not limited to academic transcripts, financial aid documents, international student forms, and tax information, in the event of closure of the institution or discontinuance of service. The plan shall include a method by which students and alumni of the institution will be able to retrieve such records upon request; and

5.4.11. Any additional information or data as deemed necessary.

5.5. The Council shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Council staff.

5.6. Upon receipt of the annual reauthorization application, Council staff ~~shall convene a compliance review committee~~ to review the submitted documentation ~~and render a recommendation to the Council~~. The Chancellor may convene a compliance review committee to evaluate unique circumstances or possible issues associated with an institution's reauthorization application. The committee will analyze the information and advise the Chancellor regarding future action. The committee shall may be composed of:

5.6.a~~1~~. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Council standards for authorization.

5.6.b~~2~~. Persons who are representative of both public and private institutions.

5.6.c~~3~~. Members of the Council staff. ~~The Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee.~~

5.6.4. Any other person(s) deemed necessary by the Chancellor.

5.7. Upon review of documentation ~~and recommendation of the compliance review committee~~, the Chancellor shall recommend to the Council that institutions that are found to be in compliance with generally accepted parameters of operation are recommended to the Council for reauthorization be reauthorized.

5.8. ~~If the compliance review committee finds~~, after review of required documentation, Council staff find that the institution is not in compliance with generally accepted parameters of operation, ~~the committee~~ Chancellor may request additional documentation for review.

5.9. Each institution shall provide, ~~at the request of the compliance review committee~~, all information the

~~committee~~ Chancellor considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring certificates and degrees. Information may include but is not limited to the following:

~~5.9.a. Institutional information.~~

~~5.9.a.1. Copies of articles of incorporation, charter, constitution, and by laws for the initial reporting year, and changes only for reporting in subsequent years.~~

~~5.9.a.2. Copy of any articulation agreement the institution has with a West Virginia higher education institution entered into or changed within the last year.~~

~~5.9.a.3. Copy of the institution's current mission and goals statement for the initial reporting year, and changes only for reporting in subsequent years.~~

~~5.9.a.4. Copy of the current institutional catalog.~~

~~5.9.a.5. Copies of current promotional and recruitment materials and advertisements provided or distributed to West Virginia residents.~~

~~5.9.b. Accreditation information.~~

~~5.9.b.1. If the institution is accredited by a regional accrediting agency, verification of the accreditation status, including any correspondence within the last year.~~

~~5.9.b.2. If the institution is accredited by a national accrediting agency or any of its academic programs is accredited by a program accrediting agency, verification of the accreditation status.~~

5.9.e~~1~~. Program information.

5.9.e.1.a. A list of current degree and certificate programs offered in West Virginia by the institution.

5.9.1e.2b. Results of any external degree program evaluation during the last year, if any.

5.9.1e.3c. A list of any degree or certificate programs that have ceased to be offered during the previous year.

~~5.9.e.4. Identification of methods used to assess student achievement.~~

~~5.9.e.5. Results of the most recent assessment of student achievement.~~

~~5.9.d. Faculty information.~~

~~5.9.d.1. A list of current full-time and part-time faculty with highest degree held, degree field(s), and institution conferring highest degree.~~

5.9.e~~2~~. Financial information.

5.9.e.12.a. The latest financial statement for the most recent fiscal year compiled or audited by an independent certified public accountant, including any management letters provided by the independent auditor.

~~5.9.f. Facilities information, if applicable.~~

~~5.9.f.1. Verification of compliance with all applicable local, state, and federal safety and fire codes.~~

5.9.g3. Student information.

~~5.9.g.1. The institution's policies about student admissions, evaluation, suspension, and dismissal for the initial reporting year, and changes only for reporting in subsequent years.~~

5.9.g.2a. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges.

5.9.g.3.b. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years.

~~5.9.g.4. The institution's policy about granting credit for experiential learning, including prior education, training, and experience for the initial reporting year, and changes only for reporting in subsequent years.~~

~~5.9.g.5. The institution's policy on post-graduation placement, if any, and data on placements for the most recent year.~~

~~5.9.g.6. A list of all student grievances for the most recent year as well as the nature and disposition of each.~~

~~5.9.h. Other information.~~

~~5.9.h.1. Information related to compliance with federal or state laws and regulations that require reporting to the public, students, employees or federal or state agencies.~~

~~5.9.h.2. Information on how the institution ensures accuracy in its usual publications such as the catalog and institutional brochures and fair representation by recruiters and agents.~~

5.9.4i. The Council shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Council staff.

5.10. On-site review.

5.10.a1. ~~The compliance review committee~~ Council staff, at ~~its~~ the Chancellor's discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in Series 20135 C.S.R. 20, Initial Authorization for Degree-Granting Institutions. ~~The committee~~ Council staff may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data ~~to the committee~~ as necessary to render a thorough and comprehensive assessment. ~~When possible,~~ the visit will be scheduled at a time which is mutually convenient to the institution and ~~the committee~~ Council staff. The institution shall pay the reasonable expenses associated with the compliance review visit.

5.10.b2. Following review of submitted documentation and/or any requisite site visit, ~~the compliance review committee~~ Council staff will prepare an analysis of the findings.

5.10.e3. Council staff will provide a draft of ~~a staff~~ its report prepared in accordance with this section

~~will be provided~~ to the institution for correction of factual errors and comment. The institution may provide the Council a response to the report within ten (10) working days of receipt of the report. The institutional comments will be included with the ~~compliance review committee report~~ Chancellor's recommendation presented to the Council.

5.10.d4. The ~~compliance review committee~~ Chancellor will develop a recommendation for the Council regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended for reauthorization.

5.10.e5. If the Chancellor finds that an institution which is does not found to meet the generally accepted higher education state standards of quality ~~will be the Chancellor will recommended~~ to the Council ~~for denial of that it deny reauthorization of the institution~~. Once reauthorization is denied, the institution is subject to the authorization requirements, process and review in Series 20135 C.S.R. 20, Initial Authorization of Degree-Granting Institutions, in order to seek authorization to operate within West Virginia.

5.10.f. An institution submitting an annual reauthorization report ~~adjudged~~ determined by the Council as meeting the standards for reauthorization shall retain its authorized status for the ~~current~~ following year.

§135-52-6. ~~Public Institutions and Annual Reauthorization.~~ [Reserved]

~~6.1. All public institutions under the purview of the Council shall apply for annual reauthorization and shall meet the conditions for reauthorization as provided in section 5 of this rule.~~

~~6.2. The Council shall make available to the public information on matters of institutional performance for all public institutions under its purview, as provided in section 2 of this rule.~~

§135-52-7. Dissemination of Institutional Information.

7.1. The Council shall make available to the public, information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Council's website or disseminated through other appropriate venues.

7.2. The Council office shall maintain a list of institutions authorized to grant certificates and degrees and shall make such list available to the public.

§135-52-8. Change of Ownership and Control.

8.1. Authorization of an institution terminates ~~at the time~~ when a change in ownership ~~resulting in a change of or~~ control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within ten (10) business days after the change of ownership ~~that resulted in a change of or~~ control. Such institution shall submit an application reflecting the change in ownership and control and an application fee of \$500.

8.1.a1. If an institution files an application requesting approval of a change of ownership and control more than ten (10) business days after ~~the such~~ change of ownership ~~resulting in a change of control~~ takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in Series 20135 C.S.R. 20, Initial Authorization for Degree-Granting Institutions.

8.1.b2. An authorized institution shall notify the Council of any anticipated change in ownership ~~that results in a change of or~~ control at least thirty (30) days prior to the change in ownership and control.

§135-52-9. Reauthorization Fees.

9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.

9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization, suspension, or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.

9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Council. ~~The Council may adjust all fee charges as deemed necessary.~~

9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

§135-52-10. Sanctions and Termination of State Authorization.

10.1. Intermediate sanctions.

10.1.a1. If an institution fails to comply with the provisions for reauthorization in this rule, the Council may progressively impose one or more of the following sanctions.

10.1.a.1.a. Require the submission and implementation of an improvement plan to address or correct problems identified by the Council.

10.1.1a.2b. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.

10.1.1.b.1. In addition to the foregoing, the Council may suspend the ability of an institution to enroll future students and deny reauthorization for the next year if any of the following occur:

10.1.1.b.2. The institution fails to provide to the Council an approved teach-out plan within the requisite time after being notified by its accreditor or the Council that it needs to do so;

10.1.1.b.3. The institution continuously fails to provide essential student services in a timely manner, including without limitation processing transcript requests or financial aid; or

10.1.1.b.4. The institution fails to comply with State or federal wage and hour laws or employee compensation contracts or the statutory requirements regarding any required subscription to the Unemployment Compensation Fund or workers' compensation insurance, the payment of premiums or other charges as required to maintain such coverage, the timely filing of payroll reports, or the maintenance of adequate deposits.

10.2. Termination of state authorization.

10.2.a1. An institution shall provide the Council with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) business days of receipt of such notice. The Council shall terminate the authorization of any institution that fails to fulfill any requirements prescribed by its accreditor within timeframes established by the accreditor.

10.2.b2. The Council may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any

other appropriate action per ~~Series 20-135 C.S.R. 20, Initial Authorization of Degree-Granting Institutions.~~

10.2.e3. The Council may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or an incomplete or unsatisfactory reauthorization application, as determined by Council staff ~~and referenced in Section 5 of this rule~~ in accordance with the provisions of this rule.

10.2.d4. The Council shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:

10.2.d4.1a. Failed to maintain the minimum standards for conferring degrees.

10.2.d4.2b. Refused or ~~willingly~~ failed to provide information to the Council in a manner and within a reasonable timeframe as established by the Council.

10.2.d4.3c. ~~Willfully~~ Provided false, misleading or incomplete information to the Council.

10.2.e5. The Council shall terminate the authorization of an institution authorized as a religious, theological or faith-based college that fails to ~~continue to~~ meet the criteria for a religious institution ~~shall have its authorization terminated.~~ The Council shall notify the institution shall be so notified of its action in writing and allow a phase-out period of not more than one additional academic term shall be permitted. The institution may file an appeal to the Council may be filed within ten (10) business days of its receipt of the written notice. In the absence of a timely appeal, the termination shall be final.

10.3. Notification to Cease Offering Degrees or Degree Credits

If an institutions that are not authorized by the Council but offers degrees and/or degree credits in West Virginia the Council shall be notified notify the institution by certified mail that ~~they it~~ shall cease immediately to offer degrees and/or degree credits. The Council shall initiate appropriate legal action if the institutions fails to comply.

§135-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.

11.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief executive officer shall notify the Council of the date of discontinuance and the name and address of the agency where records will be maintained.

11.2. ~~Records shall be~~ Institutions shall permanently maintained and their records so that authorized parties may obtain copies may be obtained by authorized parties thereof. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student.

Institutions shall retain financial aid records of each student and former student shall be retained ~~consistent in accordance~~ in accordance with state and federal ~~regulations~~ law.

11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Council of the following:

11.3.a1. the planned date of termination of postsecondary education operations;

11.3.b2. the planned date for the transfer of student records;

11.3.e~~3~~. ~~confirmation~~ of the name and address of the organization to receive and hold the student records, if different from the institution itself; and

11.3.d~~4~~. The official at the organization ~~receiving the student records~~ who is the institution has designated as the records custodian to provide official copies of records or transcripts upon request.

11.4. Any institution that fails to comply with the requirements of this section forfeits consideration by the Council of any application for authorization or reauthorization.

§135-52-12. Notification: Appeals:

12.1. Once the Council has received and verified the accuracy of information constituting any of the grounds for adverse action identified in ~~section 10~~ of this rule, the Council shall notify the institution and its owner in writing of its intent to recommend denial or suspension, or revocation of reauthorization or other adverse action and the grounds for such recommendation.

12.1.a~~1~~. The owner of the institution may, within ten (10) business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced by the Chancellor within twenty (20) business days of such request at ~~the Chancellor's office or at such other a location convenient to the parties and witnesses as may be~~ designated by the Chancellor.

12.1.b~~2~~. The hearing shall be conducted by the Chancellor ~~or his/her designee~~, pursuant to the ~~procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia~~ West Virginia Administrative Procedures Act, W. Va. Code § 29A-5-1, et seq.

12.1.e~~3~~. The Chancellor ~~or his/her designee~~ may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.

12.1.d~~4~~. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor ~~or his/her designee~~ shall be deemed unchallenged by the institution and reported to the Council for final action.

12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by ~~clear and convincing evidence~~ a preponderance of the evidence.

12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

12.4. The rules of privilege recognized by the law of this state shall be followed.

12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor ~~or his/her designee~~; and, may cross-examine witnesses called by the Council in support of the charges.

12.7. The hearing shall be open to the general public.

12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Council's files. All recorded materials shall be transcribed. The Council shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

12.10. The Council may call witnesses to testify in support of charges, ~~and~~ may present such other evidence to support its position; and, may cross-examine witnesses called by the ~~charged party~~ institution in support of its position.

12.11. All parties shall have the right to offer opening and closing arguments.

12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor ~~or his/her designee~~ upon by appropriate notice to all parties.

12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10) business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.

12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor ~~or his/her designee~~.

12.15. At any time prior to the hearing or thereafter, the Chancellor ~~or his/her designee~~ may hold conferences for the following purposes:

12.15.a1. To dispose of procedural requests, pre-hearing motions or similar matters;

12.15.b2. To simplify or settle issues by consent of the parties; or,

12.15.e3. To provide for the informal disposition of cases by stipulation or agreement.

12.16. The Chancellor ~~or his/her designee~~ may cause such conferences to be held on ~~it's~~ the Council's own motion or by the request of a party.

12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

~~12.18. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code §29A-5-1(b).~~

~~12.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 12.18 of this rule must be received by the Council no later than ten (10) business days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code §29A-5-1(b).~~

~~12.20~~18. Any final order entered by the Council following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code §29A-5-3. Such orders shall be entered

within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.

~~12.21.19.~~ Findings of fact and conclusions of law shall be recommended to the Council by the Chancellor ~~or his/her designee~~ and must be approved by a majority of the Council by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Council shall be served upon the institution and/or ~~his or her~~ its attorney of record, if any, within ten (10) business days after entry by the Council by personal service or by registered or certified mail.

~~12.22.20.~~ The final order may suspend, withdraw or revoke the authorization of the institution; place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond ~~and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute~~; or order any other action deemed appropriate by the Council, ~~up to and including payment of loans, interest and other charges in connection with institution loans caused a student by the institution's violation of this rule.~~

~~12.23.21.~~ All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code §29A-5-1, et seq.

~~12.24.22.~~ Any relief a student believes he or she was not rightfully awarded by the Council pursuant to this rule may be pursued in any other appropriate forum. Nothing in this rule precludes an institution's current or former students or current or former employees from pursuing any remedy at law or equity that may be available to them based on the institution's actions or failures to act in accordance with this rule or any other provision of applicable law.



WEST VIRGINIA
Community & Technical
COLLEGE SYSTEM

**Report to the Legislative Oversight Commission
on Education Accountability**

**West Virginia Council for Community and Technical College
Education, Title 135, Legislative Rule, Series 27,
Workforce Development Initiative Grant Programs: Learn and Earn,
Technical Program Development and WV Advance Rapid Response
Grants**

TITLE 135
LEGISLATIVE RULE

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 27
WORKFORCE DEVELOPMENT INITIATIVE GRANT PROGRAMS:
LEARN AND EARN, TECHNICAL PROGRAM DEVELOPMENT, AND
WEST VIRGINIA ADVANCE RAPID RESPONSE GRANTS

§135-27-1. General.

1.1. Scope. – ~~The West Virginia Council for Community and Technical College Education (Council) consistent with provisions of West Virginia Code §18B-3D-2, §18B-3D-6, §18bB-1-6 and §18-bB-2-bB-6; This rule~~ adopts the procedures and guidelines for the administration of the Workforce Development Programs: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response grant programs. Specifically, this rule sets forth provisions for the administration of grant funding, criteria for grant applications, determination and distribution of funds, and performance evaluation for the Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response grant programs.

1.2. Authority. – ~~West Virginia Code §18B-3D-2, §18B-1-1, §18B-2B-6~~ W. Va. Code § 18B-3D-5

1.3. Filing Date. – ~~March 29, 2019~~

1.4. Effective Date. – ~~March 29, 2019~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect on ~~March 29, 2024~~.

§135-27-2. Goals Definitions.

2.1. ~~Closely align West Virginia community and technical colleges with the economic development efforts of the state.~~ “Applicant” means the community and technical college applying for a Workforce Development Initiative Program grant.

2.2. ~~Provide funding to community and technical colleges for program delivery to advance the economic development goals of the state.~~ “Application” means the written request submitted to the Council by the applicant on forms provided by the Council.

2.3. ~~Provide an opportunity to build the capacity of community and technical colleges to sustain workforce development efforts and make a major impact on the economic development efforts of the state.~~ “Chancellor” means the chancellor for community and technical college education, as that term is defined by W. Va. Code § 18B-2B-2, or his or her designee.

2.4. ~~Provide West Virginia workers with world class transferable and portable skills across industries.~~ “Community and technical college” means the state institutions of higher education that deliver community and technical college education, as that term is defined by W. Va. Code § 18B-1-2.

~~2.5. Provide West Virginia employers a highly skilled workforce, thus providing an arena for recruiting and retaining business. “Council” means the West Virginia Council for Community and Technical College Education.~~

~~2.6. Increase the per capita income of West Virginia workers by increasing their workforce skill levels. “Grant” means the applicable Workforce Development Initiative Program grant: Learn and Earn, Technical Program Development, or Advanced Rapid Response, as appropriate to the context.~~

~~2.7. “Grantee” means the entity to which the Council has awarded a grant.~~

~~2.8. “Submission deadline” means the latest date and time that the Council must receive an application in order to consider it for funding, which is determined by the Chancellor and communicated to the applicant at the time the applicant submits a request for a grant application.~~

§135-27-3. Purpose Applicability.

~~3.1 The purpose of this rule is to set forth provisions for the administration of grant funding, criteria for applications, determination and distribution of funds, and performance evaluation for the Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response grant programs that strengthen the quality of the state’s workforce by linking the existing postsecondary education capacity to the needs of business, industry and other employers by utilizing available funding to provide explicit incentives for partnerships between employers and community and technical colleges to develop comprehensive workforce development services.~~

~~3.1. Eligible community and technical colleges shall use grants to effectuate the purposes of the Workforce Development Initiative Program established in W. Va. Code § 18B-3D-1, et seq.~~

~~3.2. Applicants must tender applications to the Council by the submission deadline for consideration in the next grant cycle. Expenses incurred by the Applicant before the Council awards the grant shall not be covered by the grant awarded.~~

~~3.3. The Council reserves the right to limit the amount of a grant in accordance with the amount of money in the Council’s grant funds available for distribution as Workforce Development Initiative Program grants.~~

§135-27-4. West Virginia Advance Rapid Response Program Description.

~~4.1. The program will focus on workforce delivery programs that develop high-performance work organizations and provide workers with world-class transferable skills enabling them to master technology and foster innovation.~~

~~4.2. The program will provide the development of specific occupational/technical competencies and workforce skills in critical thinking, problem solving, ability to work in teams, communication, math, science, and other critical competencies required for West Virginia workers and companies to be competitive in a global economy.~~

~~4.3. The emphasis of the program is skill-based training that can be certified through national, State, or local assessments resulting in a credential and meeting the economic development goals of the State as determined by the West Virginia Development Office.~~

4.4. The program is intended to provide services to West Virginia companies, but may provide education or training at out-of-state locations with the approval of the Chancellor or his or her designee.

4.5. The West Virginia Advance Rapid Response program will focus on providing services to employers that have a positive economic outcome on West Virginia. The program will support projects for:

4.5.1. Existing West Virginia companies that are expanding and creating new jobs;

4.5.2. Existing West Virginia companies that are requiring employees to obtain new job skills in order to retain their positions and keep or make the company more competitive;

4.5.3. Existing West Virginia companies that are upgrading present employees to access high-skill, high-wage occupations within the company;

4.5.4. Companies or industry sectors or clusters that are targeted by the West Virginia Development Office as critical to West Virginia's economic development;

4.5.5. New companies locating in West Virginia that require a skilled workforce for start-up;

4.5.6. West Virginia Development Office projects, targeted industries, or local economic development initiatives;

4.5.7. Pre-employment training or preparation to enter a program leading to a high-demand occupation;

4.5.8. Workers displaced by company closings or reductions in the workforce; or

4.5.9. Entrepreneurship development programs that have a positive economic impact on a region or community, particularly rural areas, and produce individual employment opportunities.

§135-27-5. Technical Program Development Description.

5.1. The program will provide funding for Certificate of Applied Science or Associate Degree programs that meet documented needs of employers ~~and/or~~ compliment the economic development needs of the State or region.

5.2. The program must target high-demand occupations resulting in participant placement with an average wage range of ~~\$12.00 per hour or more~~ at least \$15.00 per hour.

5.3. The program is intended to provide participants with the general education and technical skill competencies for high-skill, high-wage occupations.

5.4. The program is intended to increase the capacity of community and technical colleges to better serve the needs of employers and individuals through the development of new technical programming.

§135-27-6. Learn and Earn Program.

6.1. Eligible community and technical colleges may partner with employers to provide cooperative education opportunities for students. At a minimum, Learn and Earn programs must:

- 6.1.1. Document and validate the program is a high-demand occupation for the State;
- 6.1.2. ~~The cooperative education program must be~~ Be a paid work experience that pays the student ~~no less than \$10.00 per hour~~ at least \$15.00 per hour;
- 6.1.3. ~~The experience must provide~~ Provide the student with a supervised work experience in the student's expected career field or program of study and reinforce learning that has occurred in the academic program;
- 6.1.4. ~~The experience must have~~ Have clearly stated measurable learning goals and objectives reflecting ~~on~~ what the student's expected learner outcomes will be throughout the experience;
- 6.1.5. ~~The experience must be~~ Be part of the academic program and carry college credit as determined by program faculty. The Chancellor may waive this requirement for training in high-demand occupation areas;
- 6.1.6. ~~The experience must have~~ Have an assessment component that documents the student has adequately mastered the expected learner outcomes; and
- 6.1.7. ~~The experience must be~~ Be for a defined period of time and may be on a part- or full-time work basis.

§135-27-7. Grant Eligibility.

- 7.1. Under the provisions of this rule, ~~higher education institutions designated by West Virginia Code §18B-1-2, as a~~ community and technical colleges are eligible to apply for grant funding.
- 7.2. To be eligible for a grant under this program, a community and technical college ~~must~~ shall:
- 7.2.1. Complete the ~~proposal~~ application for grant funding on forms provided by the Council and submit the application electronically on or before ~~any specified application date~~ the submission deadline;
- 7.2.2. Develop programs that meet documented employer needs;
- 7.2.3. Involve and collaborate with employers in the development of programs; and
- 7.2.4. Develop customized training programs skill sets, Certificates of Applied Science, or Associate of Applied Science degrees that provide for the changing needs of employers and are offered at flexible times and locations to accommodate employer scheduling;
- 7.2.5. For programs that carry academic credit, establish programs of study agreements with public school systems for the seamless progression of students from the secondary level through community and technical college Certificate of Applied Science and Associate of Applied Science degree programs;
- 7.2.6. Assist with the ongoing assessment of workforce development needs of the community and technical college consortia district, as defined by W. Va. Code § 18B-3C-4;
- 7.2.7. Actively participate in a community and technical college consortia planning district and facilitate the involvement of consortia members in the development of applications for funding through ~~this~~ the Workforce Development Initiative Program;

7.2.8. Agree to share curricula developed with funding through these programs with other ~~public West Virginia~~ community and technical colleges;

7.2.9. Establish a special revolving fund under the jurisdiction of the community and technical college dedicated solely to workforce development initiatives;

7.2.10. Agree to establish a separate account with an identifiable account number for each grant award; and

7.2.11. Agree to adhere to all terms, conditions, and deliverables as specified in the application ~~for proposals~~ and this rule.

§135-27-8. Grant Review.

8.1. The Chancellor shall provide grant applications to all eligible institutions.

8.2. ~~For the Technical Program Development program, the Chancellor shall appoint a committee to review proposals and make recommendations to the Council for funding. For the Learn and Earn program, the Chancellor shall appoint an Advisory Committee consistent with the provisions of West Virginia Code to review applications and make recommendations to the Chancellor for funding. The Council's staff shall review West Virginia Advance Rapid Response, Technical Program Development, and Learn and Earn program proposals applications may be reviewed by Council staff for the purpose of providing a recommendation to the Chancellor for immediate implementation without committee review or the Council as appropriate. The Council shall award Technical Program Development grants, and the Chancellor shall award Learn and Earn and Advance Rapid Response Grants.~~

~~8.3. At the Chancellor's discretion, the committees may meet as often as necessary to review grant proposals.~~

~~8.4. In evaluating grant proposals, the committees shall give priority to proposals involving businesses with fewer than fifty employees.~~

~~8.53. The West Virginia Council for Community and Technical College Education may delegate authority for all grant approval to the Chancellor.~~

§135-27-9. Application Content.

9.1. Each proposal for a Learn and Earn, Technical Program Development, and ~~or~~ West Virginia Advance Rapid Response grant shall, at a minimum:

9.1.1. Identify the goals and objectives of the program, the specific business sector training needs, and the job market demand for the program/ or training;

9.1.2. Identify the number of participants to be served during the grant period, anticipated placement rate, and wage benefit of completers;

9.1.3. Identify private and public sector partners, including those with public school career-technical education which minimizes duplication of programming and maximizes the use of existing facilities;

9.1.4. Provide a letter of support for the proposal from the local Workforce Development Board and/or Regional Economic Development Authority;

9.1.5. Provide a detailed work plan, a budget, and an evaluation plan to gauge the progress of the program;

9.1.6. Provide letters of commitment from private or public sector partners confirming the actual funding amount provided for the match requirements where applicable; and,

9.1.7. Provide a plan for sustaining the program after grant funding is exhausted.

9.2. In addition to the provisions of 9.1., those community and technical colleges applying for grant funding to support a Learn and Earn project shall:

9.2.1. Complete the Learn and Earn section of the application describing in detail the cooperative education work experience reflecting the provisions contained in Section 6.1 of this Rule; and

9.2.2. Provide a written agreement between the community and technical college and the participating employer describing a formalized work plan for the work experience component.

§135-27-10. Accountability and Reporting.

10.1. A community and technical college receiving a grant under the provisions of these programs shall submit to the Chancellor all requested programmatic accountability data and budgetary reports including, but not limited to:

10.1.1. Annual financial reports detailing program expenditures;

10.1.2. Annual reports on activities conducted and dates completed; ~~and,~~

10.1.3. An evaluation of accomplishments in implementing the application's proposal; and

10.1.34. A final report on goals achieved, number of participants served, number of completers, number of completers placed in employment or obtaining a wage increase, cost of training per participant, and other information deemed necessary by the Council.

10.2. Community and technical colleges may not sell, dispose of, or use for purposes other than those specified in the application equipment purchased or upgraded with grant funds under ~~this the Workforce Development Initiative Program may not be sold, disposed of, or used for purposes other than those specified in the grant proposal~~ without approval of the Council.

§135-27-11. Grant Extension and Renewal.

11.1. Generally, grants will be awarded on a one-time basis. Technical Program Development and Advance grants may be for multiple years reflecting the duration of the career-technical program or training being provided. Community and technical colleges shall submit applications to renew Learn and Earn ~~applications must be submitted~~ annually.

11.2. The Chancellor may authorize the expenditure of carry-forward funds upon written request by the ~~institution~~ community and technical college.

11.3. Subject to meeting the stated goals and timeframes of the Workforce Development Initiative Program, with the recommendation of the Advisory Committee (for Learn and Earn projects), and the provisions of Council Series 2, the System's rule on finance, the Chancellor may renew a grant up to five years following the initial grant award may award Workforce Development Initiative Program grants for a period not to exceed one year. A grantee may obtain subsequent grants by submitting a renewal application to the Chancellor for Learn and Earn and Advance Rapid Response grants or to the Council for Technical Program Development grants, so long as the grantee has completed all the objectives of the current grant to the Chancellor's or the Council's satisfaction. Subject to annual review by the Chancellor or the Council and justification by the grantee, the Chancellor or the Council may renew Workforce Development Initiative Program grants each year for not more than five years following the initial grant award.

§135-27-12. Grant Withdrawal and Penalty; Unexpended Funds.

12.1. The Council reserves the right to withdraw a grant upon determination of the grantee's unsatisfactory compliance with either this rule or the specifications of the grant application.

12.2. The Council may cancel a grant in the event a grantee fails to commence Workforce Development Initiative Program activities within 90 days after receiving a notice of award from the Council.

12.3. A grantee shall reimburse to the Council the total sum of a grant not properly used or accounted for pursuant to this Rule.

12.4. The Council reserves the right to conduct on-site inspections or audits of a grantee's Workforce Development Initiative Program and program records during or after the grant period for a period of three years after the Council awards the grant.

12.5. The grantee shall return any unexpended funds remaining at the end of the grant period to the Council.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**Vision 2025: Science and Technology Strategic Plan
(§18B-18B-2)**

MEMORANDUM

TO: Legislative Oversight Commission on Education Accountability (LOCEA)

FROM: Dr. Juliana Serafin, Senior Director Division of Science and Research, HEPC

DATE: July 1, 2022

RE: Vision 2025: Science & Technology Strategic Plan Annual Report

West Virginia Code §18B-18B-2 requires the West Virginia Science and Research Council (SRC) report to the Legislative Oversight Commission on Education Accountability annually on progress in implementing its state science & technology strategic plan, as well as any updates to the plan. In last year's report LOCEA was provided with a completely revised strategic plan, **Vision 2025: West Virginia Science and Technology Plan**, which was created with input from more than 60 stakeholders from industry, higher education, and state government.

The strategic plan was developed with an eye toward attracting future federal research funding and new high-tech industries to West Virginia. Through the plan, over the next five years, we have an incredible opportunity to attract more external investments that will allow new sectors to take root right here at home.

The plan prioritizes four science and technology platforms for the state, based on our research strengths and workforce needs: **Life Sciences, Computer and Data Science, Advanced Manufacturing and Advanced Energy**. Life Science and Computer/Data Science were chosen for the state's RII Track-1 EPSCoR Research Infrastructure Improvement proposal, a \$20 million federal National Science Foundation grant which will be submitted in August 2022.

The new plan has specific goals in five focus areas: **STEM Talent Pipeline, Research Enterprise, Innovation & Entrepreneurship, High-Tech Companies and Stakeholder Alignment**. The plan sets Vision, Goals, Actions and Metrics for each focus area. It also analyzes trends that affect technology and workforce in the state and includes a SWOT analysis for the four science and technology platforms

Focus Area One: STEM Talent Pipeline

Vision: The vision is for West Virginia students to become interested in high-tech career pathways and actively pursue STEM degrees. Ultimately, companies will locate in West Virginia because of the availability of STEM talent in the state.

The goals are to increase two- and four-year STEM degree enrollment and conferral, and to increase research opportunities and internships for students with the support of federal grants and the state-funded Research Challenge Fund.

Actions include expanding K-12 STEM opportunities, partnering with organizations in the state to help prepare and retain STEM students, and partnering with companies and federal labs to increase the number of available internships.

FY 22 Results and Recommendations for Focus Area One:

Although physical sciences and engineering degree enrollment continue to decline with the overall decline in the number of students enrolled in public college institutions, the biological and biomedical science enrollment is not seeing the same declines and is much more stable.

<https://www.wvhepc.edu/resources/data-and-publication-center/data-center-enrollment/>

We expect STEM enrollment and retention to be positively impacted when a new NSF EPSCoR RII Track-1 grant is obtained. The 2021 proposal was declined, but a new proposal is being submitted in August 2022, and will focus on neuroscience, which will leverage existing trends in biological/biomedical sciences.

Focus Area Two: Research Enterprise

Vision: The vision for the research enterprise is that West Virginia will be recognized for its academic research in the four target platforms (Life Sciences, Computer and Data Science, Advanced Manufacturing and Advanced Energy), and that industry will seek technical expertise and collaborations with academic researchers.

Goals are to increase the number of STEM doctoral degrees conferred at West Virginia's universities, and to increase research expenditures in the four target platforms. Actions include increasing funding for the Research Challenge Fund, securing federal research capacity-building grants, increasing federal grants and contracts in the four target platforms, and identifying critical lab and facility needs and assessing funding mechanisms to fulfill those needs.

FY 22 Results and Recommendations for Focus Area Two:

The largest impact on the research enterprise in WV can be made by increasing the amount of state funds for the Research Challenge Grants which are funded through the Research Challenge Fund. These grants are extraordinarily successful in obtaining follow-on funds for research from federal agencies. The attachment at the end of this report explains more about these grants and funding. The creation of a specific Research Challenge Grant for collaboration with primarily undergraduate serving institutions would be especially helpful in bringing research funding expertise from the larger institutions to smaller ones in WV.

The Research Challenge Fund continues to fund STEM doctoral students at WVU and Marshall through the STEM Fellows program. This award was renewed in 2021 and will be in place from 2022 to 2026.

We expect that a new NSF EPSCoR RII Track-1 grant will significantly assist research growth at the higher education institutions in the state. The 2021 proposal was not funded, but a new proposal is being submitted in August 2022, and will focus on neuroscience. The grant is for \$20 million over 5 years.

Focus Area Three: Innovation and Entrepreneurship

Vision: The vision for Focus Area Three is that successful startups in West Virginia will attract more Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) funding

and venture capital to increase operations.

Goals include increasing industry-university research and development activity, including patents and invention disclosures, and SBIR/STTR awards. Actions include piloting an R&D voucher program, supporting the FAST program (Federal and State Technology Partnership Program to help West Virginia companies apply for SBIR/STTR funding and providing the SBIR/STTR match) and increasing the Entrepreneurship and Innovation Investment Fund. This Department of Economic Development-managed Fund supports entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia.

FY 22 Results and Recommendations for Focus Area Three:

In 2021, the following SBIR/STTR awards were made with assistance from TechConnect WV’s FAST project and the state Entrepreneurship and Innovation Investment Fund (EIIF):

- 5 WV companies received Phase 0 matching awards,
- 5 received Phase I matching awards, and
- 4 received Phase II matching awards from the fund.

The number of companies participating could be increased by adding more state match funding in the EIIF and the creation of a R&D Voucher program.

Focus Area Four: High-Tech Companies

Vision: The vision is to make West Virginia home to high-tech companies and industries and to grow business R&D and innovation activities.

Goals include attracting R&D-oriented federal operations; ensuring that infrastructure, facilities, and specialized equipment are available to high-tech companies; and working with the West Virginia Department of Economic Development (DED) on recruitment of high-tech companies. Actions include supporting programs to move federal anchors to the state, leveraging R&D vouchers, and collaborating for high-tech company recruitment.

FY 22 Results and Recommendations for Focus Area Four:

The WV Regional Technology Park (WVRTP), the I-17 High Technology Park, and the Department of Economic Development continue to actively participate in *Opportunity Move*, the collaborative effort to relocate federal agencies to West Virginia. The group meets monthly, has engaged consultants, and has created many points of contact in the past year.

NOAA’s Science on a Sphere project at the WV Regional Technology Park will open in the fall of 2022, bringing innovative STEM-based education tools to middle and high school students as well as the community. While this is anticipated to help with the STEM Talent Pipeline, it will also serve as a centerpiece of the Tech Park and hopefully attract other companies. The WVRTP has planned and will host a “red carpet” tour of the park for high tech company executives in the fall.

Focus Area Five: Stakeholders

Vision: The vision is that industry-academic-government stakeholders agree on the importance of science and technology in the state economy and collaborate on plan goals and actions.

Goals include establishing strong communications between stakeholders and working together to overcome challenges. Actions include conducting meetings for industry, academics, legislators, and executive branch stakeholders that identify two to three collaborative projects each year and reporting on the outcomes of the plan.

FY 22 Results and Recommendations for Focus Area Five:

New federal funding opportunities, including the Building a Better America guide to the Bipartisan Infrastructure Law and the creation of the NSF's Regional Innovations Engine program (NSF's Engines) have brought the state's key stakeholders in research and economic development together over the past year for multiple meetings to discuss funding opportunities. Concept papers for the NSF Engines program were submitted on June 30, 2022.

Conclusion

The revised **Vision 2025** presents an opportunity for significant development of science and technology in West Virginia. The Division of Science & Research announced the plan in July 2021 and is developing additional outreach methods and communications including in-person, social media, and public events.

A full copy of **Vision 2025** may be accessed here: <https://westvirginiaresearch.org/vision-2025-west-virginia-science-technology-plan>

(Attachment follows)

RESEARCH CHALLENGE GRANTS

How state funding encourages *job creation* and *private investment*

Research Challenge Grants offer return on investment

\$11.6 million

Localized Gas Utilization

External follow-on funding after initial award of \$1.3 million over five years

Jianli (John) Hu, Ph.D.
Research Challenge Grant recipient,
Localized Gas Utilization

"The RCG integrates **collaborations** wherein science & engineering faculty can engage with law, finance and geology to come up with **innovative solutions** to energy and environmental issues in West Virginia. The project has generated specific impacts on the advancement and realization of smart goals in The West Virginia Science and Technology Strategic Plan. The research activities result in a continuing stream of intellectual properties, federal grants and industrial investment to sustain the scientific advancements in energy research. With the help of the RCG, an interdisciplinary team has trained 25 PhD/MS students, 10 BS students and 4 postdocs.



\$24.3 million

Center for Cognitive Computing

External follow-on funding after initial award of \$1.3 million over five years

"The RCG grant has allowed me to extend WVU research activities on several critical national security topics as well as collaborating with state commercial and industrial companies. I have been able to advance **state-of-the-art machine learning** on biometrics and face recognition for national security. Due to this RCG, my research group **secured two large grants** and received two consecutive year supplemental grants. The RCG grant has also helped me collaborate on several projects with small businesses."



Nasser Nasrabadi, Ph.D.
Research Challenge Grant recipient,
Center for Cognitive Computing

"The Vaccine Development Center (VDC) has acquired \$26 million in extramural support from private and federal sources of funding. The VDC has **supported seven faculty-lead projects** over the past four years which has allowed labs to become more competitive for extramural support. Furthermore, the projects have resulted in **publications in high-tier journals**, illuminating research that is occurring in West Virginia. The VDC **partnerships have enabled three potentially lifesaving vaccines** to be moved into human clinical trials."

Heath Damron, Ph.D.
Research Challenge Grant recipient,
Vaccine Development Center



Research Challenge Grants (RCGs) are awarded every five years. RCGs support the creation of university-based research centers that can foster economic development and workforce advancement in alignment with the goals listed in the state Science & Technology Plan (S&T Plan). All three current projects were awarded \$1.3 million over five years. They have made excellent use of state funding by leveraging the initial investment into further funding from federal sources, supporting scores of graduate students and postdoctoral fellows, and producing hundreds of publications on important research. Increased funding of the Research Challenge Fund would be used for additional RCGs that have been very successful at garnering follow-on funding.

<h1 style="margin: 0;">GROW</h1> <p style="margin: 10px 0 0 0;">Grow research programs at institutions to help secure federal funding that will spur economic development</p>	<h1 style="margin: 0;">DEVELOP</h1> <p style="margin: 10px 0 0 0;">Develop STEM talent pipeline to increase the STEM-ready workforce in West Virginia</p>	<h1 style="margin: 0;">RETAIN</h1> <p style="margin: 10px 0 0 0;">Keep expertise in the state with competitive programs that provide quality experiences to attract and retain students</p>
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How further investment in the Research Challenge Fund would *positively impact* West Virginia

SUMMER UNDERGRADUATE RESEARCH EXPERIENCES

The Summer Undergraduate Research Experiences (SURE) program provides stipends to **fully or partially support research for 100 undergraduate students annually**. Marshall University, Shepherd University, West Liberty University, West Virginia University, West Virginia State University, and West Virginia Wesleyan College host these students. The sum of six awards is \$300,000 per year, for three years from 2020-2022.

INSTRUMENTATION & INNOVATION GRANTS

Instrumentation Grants provide \$20,000 to purchase **modern instruments for advanced undergraduate laboratories**. Innovation Grants provide one-time awards of about \$40,000 each for **equipment, supplies and minor renovations of laboratory spaces for undergraduate education and research**.

An external, expert peer review service is provided for STEM faculty. This allows them to develop competitive proposals for funding from federal agencies. Last year, 32 faculty proposals were reviewed, 1 large scale proposal to the National Science Foundation (NSF) was reviewed multiple times, and 50 proposals were reviewed for 9 competitions for about \$150,000. Administration and cost share to NSF EPSCoR RII grant was also provided at \$255,000.

STEM FELLOWS

STEM Fellows offers **funding for doctoral (Ph.D.) students studying science, technology, engineering and mathematics (STEM)** at Marshall University (MU) and West Virginia University (WVU). This grant provides **significant support** to both schools for their research programs and **helps maintain their respective research classifications**. The total for five years will be \$800,000 to MU and \$1,675,000 to WVU.

OPPORTUNITY FUND

The Opportunity Fund provides **small, one-time awards** less than \$5,000 each to assist faculty and STEM programs with expenses related to development of proposals for federal funding, and for summer student programs. Total funding per year is \$40,000.

Learn more at wvresearch.org or call us at **304.558.4128**





WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**Research Challenge Fund Annual Report
(\$18B-1B-12)**

MEMORANDUM

TO: Legislative Oversight Commission on Education Accountability (LOCEA)

FROM: Dr. Juliana Serafin, Senior Director, Division of Science, Technology and Research, HEPC

DATE: September 1, 2022

RE: Research Challenge Fund Annual Report

West Virginia Code §18B-1B-12 requires the West Virginia Higher Education Policy Commission to report to LOCEA annually on the results of the projects and activities funded by the Research Challenge Fund (RCF) appropriation.

Since it was created in 2004, the Research Challenge Fund supports undergraduate and graduate students in the STEM fields (Science, Technology, Engineering and Math) and creates a highly skilled diverse workforce, leading to new economic possibilities for West Virginia. The RCF is instrumental in helping West Virginia build its scientific research infrastructure and reputation by attracting and developing top university scientists who can obtain independent federal funding for important research. The Research Challenge Fund is evidence of the state's ongoing commitment to support science and technology research, education, and outreach.

In Fiscal Year 2022, RCF supported the following grant programs and services:

- **Research Challenge Grants** support the creation of research centers and foster economic development and workforce advancement (\$1.3 million for each of 3 awards distributed over 5 years).

For the period 2018 – 2022, the three Research Challenge Grants are:

- 1) Advancement of Science and Engineering for Localized Gas Utilization (WVU and Marshall University),
- 2) Foundation of the Vaccine Development Center at WVU (WVU)
- 3) Center for Cognitive Computing (C3): A Multidisciplinary Research Center for Excellence (WVU).

All three projects have made excellent use of the state's investment by leveraging the initial backing into further grant funding from federal sources, supporting scores of students and postdoctoral fellows, and producing hundreds of publications on important cutting-edge research. Additionally, these projects have thus far have resulted in \$59.2 million in external follow-on funding and have developed industry-academia partnerships. These three projects were featured in a recent edition of the *Neuron* magazine published by the STaR Division, which can be accessed here: https://wvresearch.org/wp-content/uploads/2022/06/Neuron_Vol18Issue1_Digital.pdf

These awards will expire at the end of 2022. New proposals for the 2023-2027 period have been received and are under external review. The new grants will start in January 2023.

- **Summer/Semester Undergraduate Research Experience (SURE)** awards are used for undergraduate research stipends to fully or partially support ~100 students annually at Marshall University, Shepherd University, West Liberty University, West Virginia State University, WVU, and WV Wesleyan College. (The sum of six awards is \$300,000 per year, for three years from 2020-2022. Note that due to 2020 summer COVID-19 shutdowns, these grants have been given an extension to 2023.) These awards help undergraduates develop much-needed research/laboratory skills and support their undergraduate work in STEM fields.
- **Science, Technology, Engineering and Mathematics (STEM) Fellows** grants are for STEM doctoral (PhD) students at WVU and Marshall. This grant provides significant support to WVU and Marshall for their STEM research programs and helps maintain their respective national R1 and R2 research rankings. These doctoral students play an important role in obtaining federal funding. Due to COVID-19 research lab shutdowns in 2020, the awards were extended a fifth year, i.e., to 2017-2022. The total for five years will be \$800,000 to Marshall and \$1,675,000 to WVU. New awards for 2022-26 started in FY23.
- **Technical Assistance** provides an external expert review service to help STEM faculty develop competitive proposals for funding from federal agencies. In FY22, 88 proposals from individual faculty, or from collaborations between faculty at multiple higher education institutions were reviewed by the service, providing critical feedback for improvement of the proposals to make them nationally competitive. Year to date, \$5.6 million has been funded for the proposals reviewed in FY22. Special review services were also provided for the NSF EPSCoR proposal which is for \$20 million grant over 5 years; the award decision for this proposal will be made in March 2023. (\$150,000)
- **Opportunity Fund** provides small, one-time awards (~\$5000 each) to assist research faculty/students and for STEM programming (total funding per year is \$40,000). In FY22, more proposals were funded (11) because COVID shutdowns resulted in a low number of proposals being received in FY21. Three events were funded: 2022 Undergraduate Research Day at the Capitol, the Chemical Landmark Dedication in Clendenin, and the Inaugural Marshall University Research & Creativity Symposium. There were 5 awards for faculty/student travel and/or research for Fairmont State University, Glenville State University, Marshall University, West Liberty University, and WV Wesleyan College. Community awards for STEM projects went to the Huntington Children's Museum, the A.D. Lewis Community Center, and Mylan Park Elementary School.
- **Innovation Grants** provides one-time awards for equipment, supplies and minor renovations of laboratory spaces for undergraduate education and research. A single FY'22 award went to West Virginia State University to build a student oriented Artificial Intelligence Lab with appropriate computers. (\$40,000)
- **Required Cost Share to NSF EPSCoR RII Grant and Grant Management** (\$255,000)

Summary:

In 2021, *Vision 2025: West Virginia Science & Technology Plan* identified growth of the research enterprise and development of the STEM Talent Pipeline at our universities as key areas of focus for the state. Clearly, the grants and programs funded by the Research Challenge Fund are some of the primary efforts needed to achieve this goal. It is especially impressive that the \$3.9 million seed funding state investment for the three Research Challenge Grants has resulted in a return on investment of \$59.2 million in independent funding from federal and private corporations. In the words of Professor Jianli (John) Hu, the principal investigator on the CIRGU Research Challenge Grant which makes higher value chemicals from natural gas: “By leveraging the RCG seed funding, now we can compete with research grants at the national level. Without this preliminary data or the findings, it’s very difficult to compete.” The \$59 million in further funding supports research facilities, students, and postdoctoral fellows, allows WV researchers to publish hundreds of publications, and brings important opportunities for industry-university partnerships. In the August call for proposals for the 2023-2027 Research Challenge Grants, a total of 18 proposals were received, indicating that state researchers also realize the value of the program.