

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE WEST VIRGINIA
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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: WV Code §18B-4-7

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 20


TITLE OF RULE BEING AMENDED: Initial Authorization of Degree-Granting Institutions

(NOTE: Title Change)

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

FILED

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

2012 AUG 10 PM 1:52

SERIES 20
INITIAL AUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§133-20-1. General.

- 1.1. Scope: This rule establishes the policy regarding accreditation and approval of degree-granting institutions which offer degrees above the associate level.
- 1.2. Authority: W. Va. Code §18B-4-7
- 1.3. Filing Date: ~~March 29, 2011~~
- 1.4. Effective Date: ~~March 29, 2011~~
- 1.5. Repeal of Former Rule: Repeals and replaces Title 133, Series 20 which had an effective date of ~~March 31, 2006~~ March 29, 2011.

§133-20-2. Purpose.

- 2.1. The West Virginia Higher Education Policy Commission is responsible for the ~~approval~~ authorization of any institution, association or organization external to or within the state which desires to offer programs or credit-bearing academic courses of higher learning in the State of 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.
- 2.2. Prior to offering any course or degree program above the associate level in the state as specified in section 6 of this rule, the entity shall apply to the Commission for authorization to operate in the state. ~~The Commission shall consult with the West Virginia Council for Community and Technical College Education when an entity desires to offer associate level programs in addition to courses and programs above the associate level.~~ The provisions of this rule shall also apply to any course or programs delivered in the state by an out-of-state institution via distance education-based instruction if the institution will have a physical presence in the state.

- 2.3. This rule is designed to protect consumers and to ensure consumers are offered quality education by postsecondary education providers within the State of West Virginia.

§133-20-3. Definitions.

- 3.1. "Academic credit" means the certification of a student's successful completion of a unit of a course of study leading to a formal award granted by an institution approved to offer a collegiate degree such as an associate, baccalaureate, masters or doctorate degree.
- 3.2. "Accreditation" means a status attained by the institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. Secretary of Education.
- 3.3. "Authorization" means the status attained by the institution that allows the institution to offer programs and courses within the State of West Virginia ~~for a specified time in a specified place~~. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.
- 3.4. "Commission" means the West Virginia Higher Education Policy Commission.
- 3.5. "Council" means the West Virginia Council for Community and Technical College Education.
- 3.6. "Course" means a formally organized, structured series of instructional activities open to the general public for which a fee is charged, and for which credit toward a degree either is awarded or may reasonably be understood to be applicable to a degree with the intent of imparting information or understanding at a level appropriate to a postsecondary audience. Instruction may be in face-to-face meetings or delivered electronically or by other means.
- 3.7. "Degree" means any earned award conferred by a higher educational 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.
- 3.8. "Degree program" means a curriculum or course of study of greater duration than eleven months of full-time study in a discipline or field that leads to a degree.
- 3.9. "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.

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

3.10.a. offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward an associate, a baccalaureate, masters, doctorate, or other specialized certification/degree designation above the baccalaureate level; or

3.10.b. operates a facility as a college or university or other entity which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

3.10.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.

3.11. "Physical presence" means an ~~institution, wherever domiciled or having its principal place of business, employs in West Virginia any person or persons for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring organization. Such activity would include advertising, promotional material, or public solicitation in any form that targets West Virginia residents through distribution or advertising in the state. In addition, the institution has physical presence in West Virginia if it delivers, or plans to deliver, instruction in West Virginia, and receives assistance from any other organization within the state in delivering the instruction, such as, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution,~~ 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:

3.11.a. An instructional site within the state.

3.11.b. Dissemination of an educational credential from a location within the state.

3.11.c. An agent, whether compensated or not, who is utilized for the

purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring institution.

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

3.11.e. Instructional delivery that receives assistance from any other organization within the state in that delivery.

3.11.f. 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 Commission and local school districts.

3.12. “Preliminary status” means six-month period of time that an institution is granted by the Commission to satisfactorily complete preliminary information as required by the regional or other appropriate, acceptable, accrediting association, ~~and~~ During this time period, the institution shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted further authorization by the Commission.

~~3.13. “Private college or university” means an institution which is “doing business or maintaining a place of business in the State of West Virginia” which offers courses of instruction or study wherein credits may be earned toward a degree in a field of endeavor. A publicly supported college or university in another state will be treated as a “private college or university” and will be authorized to offer courses of instruction toward a degree, degree credits, or degrees if it qualifies under the criteria for such institutions. An institution that employs an agent or representative in West Virginia and delivers instruction by any means within the state shall be regarded as a private college or university and shall be authorized on the same basis as any other such institution.~~

3.143. “Probationary status” means that an institution has been authorized by the Commission to enroll students, offer instruction, graduate students and award degrees under the condition that the institution is continuously seeking and making satisfactory progress toward acquiring full accreditation and full state authorization.

3.154. ~~“Proprietary institution” means a postsecondary institution that is operated for profit; a private, limited liability company or other entity that conducts~~

~~business within the state and is investor owned and/or organized for profit.~~
“Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for West Virginia residents. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

3.165. “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.

3.176. “Unearned tuition” means ~~the anticipated amount of tuition revenue that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia~~ the portion of tuition paid for which the institution has not fulfilled its contractual agreement.

§133-20-4. Exemptions.

4.1. Institutions that clearly qualify as exemptions under this rule and after Commission staff review shall be considered exempt from authorization. Institutional exemption is subject to annual review and/or revocation any time the activity deviates from the original determination factors for exemption. The following institutions shall be exempt from the provisions of this rule:

4.1.a. Any existing institutions of higher education approved to operate in West Virginia prior to ~~March 29, 2011~~ the effective date of this rule. Should any such institution, as the result of a change of ownership, or operational status from a non-profit to a for-profit institution, be required to modify its accreditation status from the Higher Learning Commission of the North Central Association, such institution must secure approval for the change(s) from the Higher Education Policy Commission.

4.1.b. Correspondence, business, occupational and trade schools which

4.1.b.1. offer nothing higher than a specialized associate degree,

~~4.1.b.2. typically do not pursue regional accreditation, and~~

4.1.b.3. are regulated under West Virginia Code provisions (18B-2B-9) on correspondence, business, occupational and trade schools.

4.1.c. Out-of-state institutions:

4.1.c.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;

4.1.c.2. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, ~~or~~ and is not for college credit, or

4.1.c.3. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation.

4.1.d. 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. Each institution of higher education which claims to be exempt under the provisions of this section must file with the Commission such information as may be required by the Commission to determine whether the institution is exempt. The written request for an exemption must be received by the Commission at least thirty (30) days prior to the proposed initiation date of a course of instruction. ~~If the Commission determines that any institution is not exempt from the provisions of this rule, it shall notify the institution in writing with the reasons for the determination.~~ The Commission shall notify the institution in writing indicating whether or not the institution is exempt.

§133-20-5. Institutional Titles.

5.1. An institution shall use within the state a title appropriate to the program and degree it offers in the state.

5.2. No person, firm, association, institution, trust corporation or other entity shall use in any manner within West Virginia the term "college" or "university" or any abbreviation thereof, or any words or terms tending to designate it as, or create the impression that it is an institution of higher education, unless it shall have obtained the appropriate ~~approval~~ authorization as provided in this rule.

5.3. This section shall not apply to any ~~entity~~ institution which used the term

"college" or "university" prior to ~~March 29, 2011~~ the effective date of this rule.

- 5.4. This section shall not apply to individual proprietorships, associations, co-partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree ~~granting~~ programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

§133-20-6. Authorization to Operate.

- 6.1. No ~~entity~~ institution may advertise, solicit, recruit, enroll, or operate a postsecondary education institution until it is authorized for operation in the State of West Virginia by the ~~Higher Education Policy~~ Commission.
- 6.2. An institution locating in West Virginia must register with the Secretary of State's office prior to making any application to the Commission for authorization.
- 6.3. All ~~private colleges and universities, private proprietary schools~~ institutions and religious, theological, or faith-based colleges offering any degree above the associate level, as specified in section 7.4 of this rule, shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.
- 6.4. All ~~private colleges and private proprietary schools~~ institutions, with the exception of correspondence, business, occupational, and trade schools as defined in Series 35, *Correspondence, Business, Occupational and Trade Schools*, of the Council for Community and Technical College Education, offering degrees not above the associate level shall register with the Council, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.
- 6.5. ~~Private colleges and universities and private proprietary schools~~ All institutions offering degrees above the associate level shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services. Granting of authorization of such institution is the responsibility of the Higher Education Policy Commission.

- 6.6. Authorization of ~~private colleges and universities and private proprietary schools~~ institutions offering associate degrees is the responsibility of the West Virginia Council for Community and Technical College Education.
- 6.7. ~~Private colleges or universities~~ Institutions and religious, theological, or faith-based colleges shall be authorized under the provisions of this rule. ~~Private proprietary schools~~ Institutions, such as correspondence, business, occupational, and trade schools, exempted under the provisions of section 4 of this rule shall be governed by the provisions of Title 135, Series 35, *Correspondence, Business, Occupational and Trade Schools*, administered by the Council.
- 6.8. Institutions which are formed, chartered, or established outside West Virginia and have been fully accredited by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education and which seek to offer courses and/or academic degree programs within West Virginia shall be authorized by the Commission to offer programs and courses within West Virginia under provisions of section 7.3 of this rule.
- 6.9. Newly established institutions located in West Virginia and those seeking accreditation by a regional accrediting association and/or by another accrediting body recognized by the U.S. Department of Education, may not offer courses or degree programs without Commission authorization to locate, relocate or establish a branch campus in West Virginia. The institution must seek Commission authorization to offer courses and/or academic programs within West Virginia per the provisions of section 7.2 of this rule.
- 6.10. Institutions wishing to exceed or change their approved programmatic mission must receive approval from the Commission to offer each program that exceeds the level of academic degrees that the institution is authorized to grant. Documentation must be submitted that specifies the scope of the proposed change, including long-range plans for new degree programs and programs that exceed the level of academic degrees currently authorized for the institution. Requests to exceed an institution's programmatic mission shall be evaluated based on the following criteria: objectives of proposed program; relationship of program to statewide mission and plan; demonstration of need; effect of new program on existing programs at other institutions; resource availability; qualified faculty and administrators; library holdings and support; facilities and equipment; and, evidence of strength to offer the proposed program.
- 6.11. ~~Authorization is limited to those institutions that deliver instruction in West Virginia and have a physical presence in West Virginia.~~ An out-of-

state institution that seeks to offer online courses and programs in West Virginia and determined to have physical presence in West Virginia is subject to the provisions of section 8 of this rule.

- 6.12. Before an institution of higher education can be authorized by the Commission to operate within the State of West Virginia, a surety bond must be provided by the institution. The obligation of the bond will be that the institution, its officers, agents and employees will faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the state. The bond shall be to the Commission in such form as approved by the Commission and is to be used only for payment of a refund of tuition and other instructional fees due a student or potential student. The amount of the bond shall be \$100,000 and shall be renewed annually. The Commission, if it deems appropriate, may reduce the amount of the bond if an institution has less unearned tuition than \$100,000, but in no event shall be less than \$20,000.
- 6.13. If instruction is to be delivered at a physical location within the State of West Virginia, the applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable. Additionally, instructional delivery sites must be compliant with Americans with Disabilities Act guidelines.
- 6.14. Institutions seeking West Virginia authorization may withdraw from the authorization process at any time upon written notification to the ~~Director~~ of Vice Chancellor for Academic Affairs of the Higher Education Policy Commission.

§133-20-7. Procedures for Granting of Authorization.

7.1. Process for securing authorization

An institution which is interested in gaining authorization to operate within the State of West Virginia must follow the prescribed procedures outlined in this rule to be considered for the requested authorization. No ~~private college or university or proprietary~~ institution shall operate until it meets the essential conditions established by the Commission and defined in this rule. Institutional accreditation must be documented or its potential for accreditation established and accepted by the Commission. Institutions authorized to operate pending full accreditation shall pursue full accreditation continuously and shall make reasonable and timely progress

toward accreditation in order to retain authorization.

When a change in ownership occurs with an ~~an private or proprietary~~ institution, the Commission shall reassess the institution's authorization status within six (6) months of the notification of the change in ownership.

7.2. Newly established institutions in West Virginia and those seeking accreditation

Newly established institutions in West Virginia and those seeking accreditation by a regional accrediting association and/or by another accrediting body must seek Commission authorization to offer courses and/or academic programs within West Virginia.

Following is a description of the steps in the authorization process:

7.2.a. It is the responsibility of the applying institution to contact the Secretary of State's office to determine if registration is required within the state.

7.2.b. A preliminary conference shall be held between the Chief Executive Officer or designee of the institution seeking authorization to operate a degree-granting institution in the State of West Virginia and the ~~Director of~~ Vice Chancellor for Academic Affairs of the Higher Education Policy Commission or designee. The agenda shall include a discussion of criteria to be met by the institution and procedures used in applying for requested authorization.

7.2.c. Following the preliminary conference, the institution shall submit a self-study report including all requested documents and materials related to authorization, including those which address the essential conditions in section 8 of this rule as may be requested. An initial application fee of \$6,000 must accompany the submission of documentation for those institutions seeking authorization. The Commission may adjust all fees charged as deemed necessary.

7.2.d. Upon receipt of the completed self-study report and all documentation, the Commission staff shall organize a compliance review committee to visit the site(s) of the institution seeking state authorization. At the discretion of the Commission staff, the compliance visit may take place at the Commission office or other appropriate locations. The principal task of the committee will be to verify that the institution complies with the Commission's standards for preliminary authorization and to report its findings to

the Commission.

The compliance review committee shall be composed of:

- 7.2.d.1. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for approval.
- 7.2.d.2. Members of the Commission staff. The ~~Director of~~ Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee.

The visit will be scheduled at a time which is mutually convenient to the institution and the Commission. The institution shall pay the reasonable expenses associated with the compliance review visit.

- 7.2.e. Following the site visit and review of submitted documentation, the compliance review committee will prepare an analysis of the findings and develop a recommendation for the Commission regarding the institutional application. Only those institutions whose proposed offerings meet state standards of quality will be recommended for authorization. The report will contain:

- 7.2.e.1. a report by the compliance review committee; and

- 7.2.e.2. a recommendation by the compliance review committee for action by the Commission regarding granting preliminary authorization as provided for in section 7.2.h of this rule.

- 7.2.f. A draft of a staff 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 Commission 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 presented to the Commission.

- 7.2.g. An out-of-state institution seeking to establish a campus in West Virginia that holds appropriate accreditation as determined by the Commission and that meets the essential conditions as provided in section 89 of this rule may be granted full authorization by the Commission.

- 7.2.h. Upon receipt and review of the compliance review committee recommendation, the Commission will consider the institution for Preliminary State Authorization effective for a period of time up to six (6) months. Within that period of time the institution shall

satisfactorily complete preliminary information as required by the regional and/or other appropriate accrediting association, and shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted further authorization by the Commission.

- 7.2.i. If the institution does not hold accreditation, the Commission staff shall request submission of information verifying its accreditation status and/or evidence of "reasonable and timely progress" toward accreditation. Reasonable and timely progress toward accreditation is understood to be a status with the regional accrediting association or an acceptable alternative accrediting association recognized by the U.S. Department of Education (recognition shall be documented) that indicates that the institution has been determined to hold the potential for accreditation and is actively pursuing accreditation within the timetable established by the regional accrediting association (unless an alternative timetable has been presented to and accepted by the Commission).
- 7.2.j. Once the institution has been accepted for consideration for candidacy by the regional accrediting organization and/or other appropriate accrediting association and has submitted evidence to this fact to the Commission, the institution shall be placed on Probationary Authorization status. The institution shall remain on Probationary status no longer than six (6) years.
- 7.2.k. If at the discretion of the Commission, satisfactory evidence is not received within six (6) months of the granting date of Preliminary Authorization status, that authorization ~~is revoked~~ may be suspended or revoked.
- 7.2.l. An institution holding Probationary status shall undertake the accreditation process immediately and shall comply with the accreditation requirements and procedures to achieve full institutional accreditation.
- 7.2.m. Failure to pursue accreditation continuously, as provided in this rule, shall result in loss of state authorization.
- 7.2.n. Each institution with Probationary State Authorization status shall submit an annual report in a format determined by Commission staff. The annual report should include the following:
 - 7.2.n.1. any changes or additions to information previously submitted as part of the basis for Preliminary State Authorization;

- 7.2.n.2. copy of current catalog with major changes cited;
- 7.2.n.3. the latest financial statement from the most recent institutional fiscal year;
- 7.2.n.4. an enrollment report from the most recent academic year;
- 7.2.n.5. a list of all institutional personnel including staff, instructors and agents;
- 7.2.n.6. summary data on student state and federal financial aid;
- 7.2.n.7. data on student retention;
- 7.2.n.8. program completion data, as applicable;
- 7.2.n.9. status of progress toward receiving full accreditation status from accrediting agency; and
- 7.2.n.10. such other information or clarification deemed necessary by Commission staff for determination of authorization recommendation.

A nonrefundable fee of \$500 shall accompany the submission of the annual report while the institution is maintaining Probationary State Authorization status. The Commission may adjust all fees charged as deemed necessary.

- 7.2.o. Following the on-site accreditation visit and action by the Higher Learning Commission of the North Central Association of Colleges and Schools and/or other appropriate accrediting association, the institution shall immediately notify the Commission which will then assign the institution an authorization status from among the following:

- 7.2.o.1. Fully authorized, as a result of the decision by the accrediting association to accredit the institution, and having demonstrated compliance with the Essential Conditions.
- 7.2.o.2. Continuation of Probationary State Authorization. An institution that holds candidacy for accreditation shall submit annual reports to the Commission documenting its progress toward the achievement of accreditation consistent with policy of appropriate accreditation

associations. Continuation of this status shall not extend beyond six (6) years.

7.2.o.3. Not authorized as a result of denial of accreditation by the accrediting association.

7.2.o.4. Continuation of Probationary State Authorization status pending an appeal of denial of accreditation by the Higher Learning Commission of the North Central Association. Continuation on these grounds shall only be granted upon showing good cause to the Commission. An institution's final authorization status will be based upon the action taken by the accrediting association.

7.3. Accredited, out-of-state institutions seeking to locate in West Virginia

Any higher education institution having its principal place of operation outside West Virginia which holds regional or other appropriate accreditation and which desires to offer courses and/or degree programs at a physical location within West Virginia must be authorized by the Commission.

Following is a description of the steps in the authorization process:

7.3.a. It is the responsibility of the applying institution to contact the Secretary of State's office to determine if registration is required within the state.

7.3.b. The institution must submit an application for approval to the Commission for each course or degree program to be offered at the site. The application should include written unconditional assurance that:

7.3.b.1. Each course or program of study proposed to be offered in West Virginia has been approved by the governing board of the institution, and if applicable, by the appropriate state agency in the state where the main campus of the institution is located.

7.3.b.2. The institution has been approved as necessary by the appropriate agency, if any, in the state where the main campus of the institution is located.

7.3.b.3. The institution offers degree programs at the level for which credit is proposed to be awarded in those programs in West Virginia.

- 7.3.b.4. The ~~accredited~~ out-of-state institution is authorized by its appropriate accrediting body to offers degree programs outside the state where the main campus is located.
- 7.3.b.5. Any credit earned in West Virginia can be transferred to the institution's principal location outside West Virginia as part of an existing degree program offered by the institution.
- 7.3.b.6. The institution offers the same program at the same level at its principal location outside West Virginia that it seeks to offer at a physical location in West Virginia.
- 7.3.b.7. The institution presents data that projects market demand and availability of openings in the job market to be served by the new program for which the institution is seeking authorization to offer in West Virginia.
- 7.3.c. In making its determination, the Commission will consider whether the proposed degree programs or courses duplicate existing offerings of other institutions of higher education at the locations for which approval is requested.
- 7.3.d. Authorization for degree programs may be for a period of up to four years at a specified location with an application for renewal of the authorization required to be filed with the Commission at least ninety days prior to the expiration of the authorization.
- Authorization for courses may be granted for a period of one year at a specified location with an application for renewal of the authorization required to be filed annually with the Commission at least ninety (90) days prior to the expiration of the authorization.
- 7.3.e. Accredited, out-of-state institutions authorized to deliver programs and/or courses for a specified period of time are not subject to the annual reauthorization provision of section 14 of this rule.
- 7.3.ef. The Commission may waive any or all of the reporting requirements for institutions that are delineated in section & 9 of this rule.
- 7.3.fg. Any out-of-state or private accredited institution that is granted authorization shall receive written notification of acceptable status and will be assessed an initial authorization fee not to exceed \$500.

7.4. Religious, theological or faith-based institutions

To qualify as a religious, theological, or faith-based college, an institution must qualify both as an institution of ~~higher education~~ as defined in section 3 of this rule and as a religious institution based on meeting each of the following criteria:

- 7.4.a. Be a non-profit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a non-profit religious corporation.
- 7.4.b. Limit the educational program to the principles of that church or denomination, and the diploma or degree is limited to evidence of completion of that education.
- 7.4.c. Only grant degrees or diplomas in areas of study that contain on their face, in the written description of the title of the degree or diploma being conferred, a reference to the theological or religious aspect of the degree's subject area.
- 7.4.d. Not market, offer, or grant degrees or diplomas which are represented as being linked to a church or denomination, but which, in reality, are degrees in secular areas of study.
- 7.4.e. Have obtained exemption from property taxation under state law and shall have submitted a copy of the certificate of this exemption to the Commission.
- 7.4.f. Additional evidence may be provided by an institution seeking to substantiate that the institution is a religious institution including:
 - 7.4.f.1. Evidence that the institution holds at least pre-accreditation status with a nationally recognized accrediting associations.
 - 7.4.f.2. A statement of institutional mission clearly establishing the mission of the institution as solely religious, and curricula and degree, diploma, or certification programs that clearly support that mission singularly.
 - 7.4.f.3. Other appropriate, substantial, evidence of qualification for state authorization as a religious, theological, or faith-based college.
- 7.4.g. An institution shall not be eligible for authorization as a religious,

theological, or faith-based college if it offers degrees appropriate only for academic institutions, such as, but not limited to, Bachelor of Arts or Bachelor of Science, Master of Arts or Master of Science, Doctor of Philosophy, or other degrees typically offered by academic institutions, regardless of curriculum or course content, unless the degree title includes the religious field of study (e.g., "Bachelor of Arts in Religious Studies"). Institutions authorized as religious, theological, or faith-based colleges also shall not offer degrees associated with specific professional fields or endeavors not clearly and directly related to religious studies or occupations. Examples of such degree titles are Bachelor of Business Administration or Master of Business Administration; Bachelor of Education, Master of Education or Doctor of Education; and Doctor of Psychology.

- 7.4.h. An authorized religious, theological, or faith-based college, its educational programs, its degrees and diplomas, and its honorary degrees, have no state approval or recognition status whatsoever. An institution operating under this authorization shall not state or imply by any means whatsoever that there exists any endorsement by the state or by any agency or agent of the state of the education, documents awarded by the institution, or the institution itself, other than the institution's authorization to operate.
- 7.4.i. An institution authorized as a religious, theological, or faith-based college is not subject to the annual reauthorization provisions of this rule.

§133-20-8. Authorization Procedures for Out-of-State Institutions with Physical Presence in West Virginia.

- 8.1. An out-of-state institution with physical presence in West Virginia, as defined in section 3, but no physical location within the state, must abide by the following procedures for initial authorization:
 - 8.1.a. Submit appropriate documentation to discern if physical presence is triggered as defined in section 3 of this rule.
 - 8.1.b. Submit documentation of appropriate accreditation.
 - 8.1.c. If Commission staff determines that the institution's activities constitute physical presence, the institution shall submit an initial application fee of \$500.
 - 8.1.d. The Commission staff may, at its discretion, adjust or waive the application fee.

- 8.2. The Commission staff, at its discretion, may request additional information from the institution to ascertain whether it meets the essential conditions provided in section 9 of this rule in the determination of the conferral of initial authorization.
- 8.3. Once initial authorization is conferred by the Commission, authorization for West Virginia physical presence may be for a period of up to four years with an application for renewal of the authorization required to be filed with the Commission at least ninety days prior to the expiration of the authorization.
- 8.4. Any accredited institution seeking to retain authorized physical presence in West Virginia, will be assessed a reauthorization fee not to exceed \$500.
- 8.5. Institutions authorized under this section are not subject to the reauthorization provisions of section 14 of this rule.

§133-20-89. Criteria For Authorization Essential Conditions.

89.1. Essential Conditions. An institution seeking authorization to operate in West Virginia must meet the following essential conditions established by the Commission. To apply for Preliminary State Authorization the institution must provide to the Commission full documentation that demonstrates fulfillment of the essential conditions including evidence of a critical and compelling regional or statewide need or demand for the specific academic degree programs(s) in the state.

89.1.a. Familiarity with accreditation and state authorization policies and procedures

The institution shall provide evidence that it is familiar with and understands accreditation procedures of the Higher Learning Commission of the North Central Association and/or other appropriate body and state authorization policies and procedures. The statement should indicate perceived strengths and weaknesses with respect to accreditation criteria and assess the capabilities of the institution in achieving accreditation status. It shall state the name of the accrediting association(s) from which accreditation will be sought. If the institution has secured full accreditation status, a copy of the final accreditation report shall be submitted to the Commission.

89.1.b. Statement of mission

A statement of mission shall have been developed, formally adopted by the institution's governing body and made public, which defines the basic character of the institution, including a brief description of the educational programs to be offered and their purposes, the students for which the programs are intended, the geographical area served by the institution (or the particular constituency it serves), and a description of how the institution will fit within the broader higher education community. The mission shall be appropriate to an institution of higher education and the institution must plan to award degrees.

89.1.c. Institutional organization, administration, and delivery sites

89.1.c.1. A governing board that possesses and exercises necessary legal power to establish and review basic policies that govern the institution shall have been formally established. The board shall include among its members some who represent the public interest and are sufficiently autonomous from the administration and ownership to assure the integrity of the institution. The Commission shall be provided a list of the members of the board with a brief resume of each.

89.1.c.2. An executive officer shall be designated by the governing board to provide administrative leadership for the institution. This officer's name, title, current vita and the address of the administrative office, shall be provided to the Commission.

89.1.c.3. If faculty members are employed at the time the application is filed with the Commission, the faculty members' names, their academic credentials (degrees, previous experience, etc.), and teaching fields shall be identified. If no faculty members have been employed, the institution shall describe the qualifications of the faculty that is to be recruited and the procedures that will be used to find and contract with faculty members.

89.1.c.4. The method of program delivery and/or physical location of course delivery shall be defined. If a program is designed for online delivery, it shall meet best practice guidelines for distance education delivery as outlined by the regional accrediting agency. If the program is designed for traditional classroom delivery, the proposed physical location shall be identified.

89.1.c.5. To assure that instructional delivery sites meet applicable

state standards for health and safety, institutions must secure a certificate of occupancy and recent fire inspection report from the State Fire Marshal's office for each instructional delivery site. These requirements are not applicable if delivery is in a public building that already has regular health, safety, and fire inspections upon receipt of last approved inspection. If the nature of the building is changed, additional inspections will be required.

89.1.c.6. Instructional delivery sites must be compliant with Americans with Disabilities Act guidelines.

89.1.d. Degrees and academic programs

89.1.d.1. A degree shall be awarded upon successful completion of an educational program. The institution shall provide a list of the degrees it proposes to award.

89.1.d.2. The planned educational programs shall be compatible with the proposed institutional mission. The relationship shall be described in documents provided to the Commission.

89.1.d.3. The academic program proposed for offering shall be appropriately named and be based on fields of study recognized as appropriate for a postsecondary institution. Evidence shall be provided to the Commission that the fields of study upon which the academic programs are to be based are, in fact, so recognized. Such recognition, for example, could be demonstrated by the existence of professional literature in the field; the offering of similar programs in already-accredited institutions, generally; and by the existence of professional organizations related to the field.

89.1.d.4. The content and length of the proposed academic program shall follow practices common to institutions of higher education. The commonly accepted minimum program length is: 60 semester credits for associate's degrees, 120 semester credits for bachelor's degrees, 30 semester credits beyond the bachelor's degree for master's degrees, 30 semester credits beyond the master's degree for doctorates.

Academic credit shall be awarded upon completion of

each unit of the course of study, leading to a formal award granted by the institution.

Documentation shall be provided to the Commission that lists requirements for each degree program including representative course syllabi specifying goals and requirements, course content, methods of evaluation, and bibliography.

The student-teacher ratio shall be reasonable at all times in keeping with generally accepted teaching modes for the subject matter. The institution must employ at least one full-time faculty for each ~~major~~ degree program.

- 89.1.d.5. Any proposed undergraduate degree program shall include a coherent general education component that is consistent with the institution's mission and appropriate to its educational programs. The undergraduate general education component shall be documented.

General education is defined as follows:

General Education is "general" in several clearly identifiable ways: it is not directly related to a student's formal technical, vocational or professional preparation; it is a part of every student's course of study, regardless of his or her area of emphasis; and it is intended to impart common knowledge, intellectual concepts, and attitudes that every educated person should possess.

The minimum requirement for general education for all undergraduate programs delivered through the traditional distributed curricula is 15 semester credits for technical associate's degrees, 24 for transfer associate's degrees, and 30 for bachelor's degrees. If the general education component is delivered through integrated, embedded, interdisciplinary, or other accepted models, institutions must demonstrate that the program meets minimum requirements equivalent to the distributed model.

- 89.1.d.6. Student access to all necessary learning resources and support services shall be provided. Necessary resources and support services vary by type of program, but all require some use of library resources. Laboratories may be required for some programs. Support services such as academic advising, financial aid counseling, and support for special, targeted, constituencies may be needed. The

institution shall describe the learning resources and support services that it will provide and state how they will be provided to students on a regular, dependable basis.

89.1.d.7. Distance learning instruction, when offered, should be considered part of the total program and be judged by criteria as used for sessions and courses offered by the institution in the regular academic year. Documentation shall be provided to the Commission that shows that academic standards for all programs or courses offered electronically are the same as those for other courses delivered at the institution. Additionally, any programs that are offered primarily through asynchronous or synchronous technology shall meet the standards of good practice for distance education delivery as outlined by the regional accrediting agency.

89.1.e. Admission policies

Admission policies shall be consistent with the institution's mission and appropriate to the educational program. The Commission shall be provided with a copy of the institution's admission policies, policies regarding tuition and fees assessment, and refund policies. The policies shall define the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs. These policies and related publications shall provide a true and accurate representation of the institution and its programs when recruiting students.

89.1.e.1. Degree program admission policies must be at least the following:

89.1.e.1.A. baccalaureate degrees must require a high school diploma or equivalency, and

89.1.e.1.B. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.

89.1.e.2. These policies and related publications shall provide a true and accurate representation of the institution and its programs when recruiting students.

89.1.f. Financial resources

The institution shall have financial resources adequate to support start-up activities and sources of funds sufficient to ensure that the institution can sustain itself once students have been admitted. An institution shall continuously ascertain its financial requirements, determine its sources of revenue, plan for current and future needs, and budget its resources accordingly. The Commission shall be provided with:

89.1.f.1. A current financial statement compiled or audited by an independent certified public accountant. If the financial statement is unaudited or internally generated, a copy of the most recent income tax return must also be submitted;

89.1.f.2. A budget listing all sources of income and all Educational and General (E&G) expenditures and specifying the dollar amounts and percentages for each component of the budget for the preceding three fiscal years (including the current year). A projection of expenditures and revenues for the upcoming year should be included.

89.1.f.3. The institution shall demonstrate that it has the financial resources and planning sufficient to realize its mission over an extended period of time. It shall demonstrate that it has adequate financial resources to meet the following: facility maintenance and overhead; staff and faculty payroll; books, supplies, and/or equipment utilized by students; and general operating costs including printing and advertising.

89.1.g. Faculty credentials

89.1.g.1. The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds appropriate academic credentials in the program area or discipline in which the faculty member teaches. Each instructional faculty member shall either: (1) possess one or more degrees in an appropriate discipline; or (2) as an alternative to formal academic credentials, demonstrate competence by virtue of prior experience or academic training, or both, which are related to the field in which the instruction will be offered.

89.1.g.2. The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds academic

credentials appropriate to the degree level of the programs or programs in which the faculty member teaches.

89.1.g.2.A. An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty, including at least one instructional faculty member teaching in each program, shall hold a doctoral or other terminal degree. All other instructional faculty members who teach in programs at the baccalaureate level shall either:

- Hold a master's degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

89.1.g.2.B. All instructional faculty teaching in a program at the master's, first professional or doctoral level shall either:

- Hold a doctoral or other terminal degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

89.1.g.3. An institution must employ faculty members whose highest earned degree presented as the credential qualifying the faculty member to teach at the institution is from an institution accredited by an accrediting body recognized by the U.S. Department of Education. Exceptions may be made only with the prior consent of the Commission.

89.1.h. Evaluation and assessment

The institution must have a clearly defined process by which the curriculum is established, reviewed, and evaluated. The institution must provide for appropriate and regular evaluation of the institution and its program and course effectiveness including assessment of student learning, retention, graduation rates and student, graduate, faculty and employer satisfaction. The results must be used to ensure and improve quality of instruction.

89.1.i. Tuition policies

89.1.i.1. A tuition policy shall be developed that provides:

89.1.i.1.A. The total tuition for any specific program shall be the same for all persons enrolled at the same time;

89.1.i.1.B. Tuition charges for programs shall be justifiable, effective on specific dates and applicable to all who enroll thereafter;

89.1.i.1.C. All extra charges and costs shall be revealed to the prospective student before he or she is enrolled;

89.1.i.1.D. The true and accurate costs of courses and program completion must be published and made readily available to all prospective and current students.

89.1.i.2. Institutions that the U.S. Department of Education has approved for eligibility for federal student financial aid must comply with the federal regulations governing institutional refunds. An institution must develop criteria for refunds of tuition and fees and make them available to all students.

9.1.i.3. For institutions not participating in federal Title IV financial aid, criteria for refunds of tuition and fees must be developed and made available to all students and prospective students.

89.1.j. Financial aid

A policy shall have been developed that provides prospective students and applicants with basic opportunities for student financial aid. This information shall include but not be limited to: (1) types of federal, state, local, private and institutional aid offered to students at the institution; (2) description of the financial aid application process and the method for determining student eligibility for aid; (3) methods and schedules used to determine and disburse financial aid to students; and (4) statement of the rights and responsibilities of financial aid recipients. A copy of the policy must be attached to Commission submission materials. Information related to student responsibility for repayment of loans and other financial aid must be readily available to students.

Consequences relevant to non-payment and delinquent or default repayment of loans must be published and readily available to students.

89.1.k. Library resources

The institution shall maintain or ensure via current and formal written agreements with other libraries or from other resources that students have adequate access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Institutions offering graduate work shall provide library resources that include basic reference and bibliographic works in each field where work is offered and the major journal and serial sets for maintaining currency in each discipline. Utilization of electronic data collections should also be addressed. The institution shall provide clear and concise methods for on-campus and/or remote access of library electronic media resources and there shall be communication to students in a matter to minimize barriers to usage.

89.1.l. Institutional and student records

89.1.1.1. The institution shall maintain accurate records on all enrolled students. These records minimally shall include:

89.1.1.1.A. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the institution's admission standards. Each student record must reflect the requirements and justification for admission of the student to the institution. Admission records must be maintained for five years.

89.1.1.1.B. Transcript of the student's academic work at the institution shall be retained permanently in either hard copy forms or in a database with backup.

89.1.1.1.C. A record of student academic progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades and indication of the

student's status (graduated probation, etc.).

89.1.1.2. Financial records of the institution must be maintained and open for inspection by properly authorized officials of the Commission pursuant to compliance with confidentiality laws.

89.1.1.3. Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the enrollee.

89.1.1.4. The institution must have policies concerning retention and disposal of records and information-release policies which respect the rights of individual privacy, the confidentiality of records and the best interests of the student and institution.

89.1.1.5. The institution shall have a written plan for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of institutional closure.

89.1.m. Catalog and official publications

89.1.m.1. Official publications of the institution shall reflect the institution's integrity, commitment, and reputation and convey its sense of mission, character, goals and objectives to the public. All information released by the institution must be true and accurate.

89.1.m.2. Official catalogs must describe the institutional mission, requirements for satisfactory completion of degree programs, student policies, information on enrollment, tuition and fees, faculty credentials, academic calendar, student grievance procedure, transferability of credit, and other information specifically applicable to students.

89.1.n. Student grievances

An institution shall publish and make available to all students the institution's grievance policies and procedures regarding the receipt, investigation and resolution of student complaints. These policies must include:

89.1.n.1. An appropriate time frame for investigating and resolving

the complaint;

89.1.n.2. Safeguards that those persons charged with resolving the complaint are capable of making a fair and impartial judgment;

89.1.n.3. Procedures to ensure that a student will not be subject to unfair actions as a result of an initiation of a complaint proceeding; and

89.1.n.4. The maintenance of records, disposition and other pertinent information concerning institutional complaints for at least five (5) years.

89.1.o. Other criteria deemed to be pertinent.

89.2. The Commission, at its discretion, may waive all or part of the reporting requirements in section ~~13~~ 14 of this rule for nationally or regionally accredited institutions seeking authorization to offer credit courses or academic degree programs.

§133-20-910. Termination of State Authorization.

910.1. Termination of state authorization for those institutions not subject to annual reauthorization.

910.1.a. An institution shall provide the Commission 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) days of receipt of such notice.

910.1.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, or forfeit the institution's surety bonds, or take any other appropriate action. Good cause shall consist of any one or more of the following:

910.1.b.1. The institution is no longer making reasonable and timely progress toward accreditation while assigned Preliminary or Probationary State Authorization;

910.1.b.2. Loss of accreditation by a nationally or regionally recognized accrediting agency;

910.1.b.3. Cancellation of the institution's bond by the bonding

company and failure to secure a replacement in accordance with this rule;

- 910.1.b.4. Providing false, misleading, or incomplete information to the Commission;
- 910.1.b.5. Presenting information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect to students or prospective students;
- 910.1.b.6. Refusal to allow reasonable inspection or to supply reasonable information after a written request by the Commission has been received;
- 910.1.b.7. A final determination that the institution has engaged in conduct prohibited by this rule, and any specified corrective action has not been taken within the required time;
- 910.1.b.8. Closure of the institution without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the institution's contractual obligations to the students;
- 910.1.b.9. Conviction of the owner of an institution for a felony or crime involving administration of the institution or involving Federal Student Assistance programs.
- 910.1.b.10. Repeated and/or consistent violations of the guidelines found in this rule, particularly in areas such as advertising, fair consumer practices, or operational standards.
- 910.1.b.11. Exclusion from eligibility to participate in the West Virginia Higher Education Grant Program due to one of the following reasons:
 - 910.1.b.11.A. The institution does not have a signed participation agreement in place; or
 - 910.1.b.11.B. The institution has been deemed ineligible to participate in federal student financial aid programs by the United States Department of Education; or
 - 910.1.b.11.C. The Commission has determined, 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.

910.1.b.12. Failure to submit an acceptable annual report, an incomplete or unsatisfactory annual report, as determined by Commission staff and as referenced in section 134 of this rule.

910.1.c. 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 institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed within ten (10) working days. In the absence of a timely appeal the termination shall be final.

910.2. ~~Notification to Cease Offering Degrees or Degree Credits~~ Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.

10.3. The provisions of section 8 of this rule are only applicable to accredited, out-of-state institutions offering only online instruction in West Virginia and accredited, out-of-state institutions authorized to deliver program and/or courses for a specified period of time.

§133-20-101. Notification: Appeals.

101.1. Once the Commission has received and verified the accuracy of information constituting any of the grounds identified in section 9 10 or denial of preliminary authorization, the Commission shall notify the institution and its owner in writing of its intent to recommend denial, suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.

101.1.a. The owner of the institution may, within ten (10) work days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) work days of such request at the Chancellor's office or at such other location convenient to the parties and witnesses

as may be designated by the Chancellor.

- 101.1.b. The hearing shall be conducted by the Chancellor of the Commission or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.
- 101.1.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.
- 101.1.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.
- 101.2. At 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.
- 101.3. 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.
- 101.4. The rules of privilege recognized by the law of this state shall be followed.
- 101.5. 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.
- 101.6. 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.
- 101.7. The hearing shall be open to the general public.
- 101.8. 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.

101.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

101.10. 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 in support of its position.

101.11. All parties shall have the right to offer opening and closing arguments.

101.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.

101.13. 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) 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.

101.14. 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.

101.15. At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:

101.15.a. To dispose of procedural requests, pre-hearing motions or similar matters;

101.15.b. To simplify or settle issues by consent of the parties; or,

101.15.c. To provide for the informal disposition of cases by stipulation or agreement.

101.16. The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.

101.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

101.18. 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 section 29A-5-1(b).

101.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 10.18 of this rule must be received by the Commission no later than ten (10) 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 section 29A-5-1(b).

101.20. Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code section 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.

101.21. 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 attorney of record, if any, within ten (10) days after entry by the Commission by personal service or by registered or certified mail.

101.22. The final order may deny preliminary authorization; 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 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.

101.23. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code section 29A-5-1, et seq.

101.24. 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.

§133-20-142. Notification and Deposit of Records Upon Discontinuance of a Program or Institution.

142.1. 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.

142.2. Records shall be permanently maintained and copies may be obtained by authorized parties. 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. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.

142.3. 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:

142.3.a. the planned date of termination of postsecondary education operations;

142.3.b. the planned date for the transfer of student records;

142.3.c. confirmation of the name and address of the organization to receive and hold the student records; and

142.3.d. the official at the organization receiving the student records who is designated to provide official copies of records or transcripts upon request.

§133-20-123. Advertisements, Announcements and Other Promotional Materials.

123.1. An institution seeking authorization shall adhere to the following principles:

123.1.a. "Advertising" includes any form of public notice however distributed. Within this definition would be virtually all publications and promotional items and efforts that could normally be expected to be seen by significant numbers of prospective students or their sponsors. Examples include catalogs, bulletins, brochures and other institution publications, signs, mailing pieces, radio, television, newspaper, electronic or social media, or any other form of public notice designed to aid in the institution's recruiting and promotional activities.

123.1.b. An institution shall use its name as shown in its letter of approval from the Commission, together with a complete address, for all advertising and promotional purposes within the state.

123.1.c. All advertisements, announcements and promotional material of any kind which are distributed in West Virginia shall be free from statements that are untrue, deceptive or misleading with respect to the institution, its personnel, its services or the content, accreditation status and transferability of its courses, degree, or certificate programs.

123.1.d. Reference in advertising to accreditation shall name the agency and shall be limited to accreditation currently held by the institution through nationally recognized accrediting agencies as defined and listed by the United States Department of Education.

123.1.e. No advertisement, announcement or any other material produced by or on behalf of an institution of higher education shall in any way indicate that the institution is supervised, recommended, endorsed or accredited by the Commission; neither shall it include the name of the Commission except to assert that the Commission has authorized the institution to operate in the state.

§133-20-134. ~~Ongoing Monitoring~~ Annual Reauthorization.

134.1. The Higher Education Policy Commission shall monitor institutional academic quality, an institution's financial viability, and compliance with the provisions of this rule and West Virginia laws with respect to consumer protection and other matters of state oversight. A reauthorization application must be submitted to the West Virginia Higher Education Policy Commission by November 1 according to the guidelines outlined in Series 52, *Annual Reauthorization of Degree-Granting Institutions.*

~~13.2. Any post-secondary institution authorized to operate within West Virginia prior to the effective date of this rule is exempt from the monitoring requirements of this rule.~~

~~13.3. Each institution with full state authorization must demonstrate ongoing compliance with the essential conditions in an annual report submitted in a format determined by Commission staff. If the institution is found in compliance, the institution's approval may be continued with the timeframe for periodic monitoring determined by the Commission or its designee. The annual report should be submitted by July 1 each year and should include the following:~~

- ~~13.3.a. any changes or additions to information relative to the Essential Conditions of section 8.1 of this rule previously submitted as part of the basis for currently granted authorization;~~
- ~~13.3.b. such other information or clarification deemed necessary by Commission staff for determination of an authorization recommendation.~~
- ~~13.4. A nonrefundable fee of \$200 shall accompany the submission of the annual report.~~
- ~~13.5. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission. The Commission may adjust all fees charged as deemed necessary.~~

~~§133-20-14. Student Complaints.~~

- ~~14.1. Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure or discrepancies between verbal and written information, intimidation or coercion may require corrective public announcements or in the opinion of the Commission significant deviation from fair consumer practices may result in conditional authorization or revocation of agent or instructional authorization.~~
- ~~14.2. If the institution does not take corrective action, the Commission may take what action it deems appropriate under Section 10 of this rule.~~
- ~~14.3. Institutions authorized under this rule must report to the Commission in writing within thirty (30) days any unresolved written complaints about their operation of which they are knowledgeable (including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within thirty (30) working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue to operate is sought.~~

**West Virginia Higher Education Policy Commission
Meeting of August 10, 2012**

ITEM: Final Approval of Series 20, Initial Authorization of Degree-Granting Institutions

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves Series 20, Initial Authorization of Degree Granting Institutions, as revised, for final filing with the Secretary of State.

Further Resolved, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

STAFF MEMBER: Kathy Butler

BACKGROUND:

Series 20, Initial Authorization of Degree Granting Institutions, is the legislative rule that outlines the procedures for the Commission to approve any institution, association, agency, or organization external to or within the state that requests approval to offer programs or credit-bearing academic courses of postsecondary education in the State of West Virginia. With the passage of Senate Bill 375 during the 2011 regular legislative session and the subsequent creation of Series 52, Annual Reauthorization of Degree-Granting Institutions, Series 20 has been revised to strengthen the rule by clarifying the authority of the Commission in its review and approval of requests for authorization and clarifying areas of ambiguity throughout the document. The changes to Series 20 will help protect consumers by ensuring that they are offered quality education by post-secondary providers within West Virginia.

At the May 18, 2012 Commission meeting, the updated legislative rule, Series 20, Initial Authorization of Degree-Granting Institutions, was approved for filing with the Secretary of State for a thirty-day public comment period. Staff received comments from five sources including a private trade school, the West Virginia Independent Colleges and Universities, an online school, and two individuals. Summaries of the comments and staff responses are included on the following pages. It is recommended that the minor changes be made and the final rule be approved.

Comment: The word “specialized” in front of “associate degree” in Section 4.1.b.1 unnecessarily introduces confusion. The lines between different types of associate degrees tend to be blurry, but the difference between obtaining an associate degree and a bachelor degree is quite clear. Therefore, I suggest dropping the word “specialized.”

Response: The use of the term “specialized” associate degree is consistent with language in West Virginia Code §18B-2B-9 and West Virginia Council for Community and Technical College Education, Series 35, Correspondence, Business, Occupational, and Trade Schools. No change made.

Comment: Section 4.1.b.2 creates the requirement that institutions “typically do not pursue regional accreditation...” This introduces unnecessary confusion; therefore, this requirement should be dropped altogether.

Response: All these issues are defined in West Virginia Code §18B-2B-9 and the West Virginia Council for Community and Technical College Education’s Series 35, Correspondence, Business, Occupational, and Trade Schools, which states that “[Correspondence, business, occupational, and trade schools which] are regulated under West Virginia Code Provisions (18B-2B-9) on correspondence, business, occupational, and trade schools.” Consequently, Section 4.1.b.2 has been deleted and replaced by Section 4.1.b.3. Change made.

Comment: Section 2.1 states in part: “Authorization is required for all postsecondary providers...” and other language refers to “...programs or credit bearing academic courses of higher learning...” On its face, this language is beyond the scope of statutory authority. West Virginia Code section 18B-4-7 grants authority only for setting standards for conferring degrees.

Response: West Virginia Code §18B-4-7(c) specifically mentions that granting of baccalaureate degrees is based upon “substantial undergraduate course offerings.” Degree programs are comprised of distinct required courses. Initial authorization for institutions seeking to deliver academic programs in West Virginia must include monitoring of all academic offerings whether they lead directly to a degree or begin in their infancy as non-degree programs. Additionally, Section 2.1 goes on to define exactly what types of institutions are impacted by this rule. No change made.

Comment: A problem exists with the definition of “institution” in Section 3.10. Specifically, Section 3.10.b includes not only entities which offer degrees, but any “...other indicia of a level of educational attainment beyond the secondary school level...” There are institutions which offer postsecondary training below the degree level. I don’t believe the Commission was interested in regulating these institutions; most or all of which fall under the Council’s jurisdiction, anyway.

Response: Section 1.1 of Series 20, Initial Authorization of Degree-Granting Institutions, defines the foundation parameters for which this rule is applicable. It states: "This rule establishes the policy regarding accreditation and approval of degree-granting institution which offer degrees above the associate level." The term "institution" was purposefully used throughout the policy and intended to be broad. The term itself does not imply regulation; however, it is used to identify sources of postsecondary education. Institutions that are exempt from specific requirements are noted throughout the document. No change made.

Comment: The definition of "degree" and "degree program" in Sections 3.7 and 3.8 are too broad.

Response: The definition of degree is the definition used by the Integrated Postsecondary Education Data System that is used nationwide to gather data from postsecondary education providers with the exception of the words "of greater duration than eleven months of full-time study." These words were added to make a distinction between degrees and degree programs and certificate programs of less than one year. No change made.

Comment: Section 6.1 purports to give the Commission authority to authorize all "institutions." As noted above, the definition of institution is so broad that it could include a beauty college or a dog training academy.

Response: The definition of "institution" found in Section 3.10, includes the language "...or other entity of any nature whatsoever offering education beyond the secondary level..." Section 1.1 identifies for which institutions this policy is applicable. Additionally, Section 4.1 of the policy clearly defines institutions that are exempt from the provisions of this policy. No change made.

Comment: Section 6.4 requires institutions offering degrees not above the associate degree level to register with the Council and meet its authorization criteria. This could be read along with Section 6.1 to indicate that certain institutions must be authorized by both the Commission and the Council.

Response: This rule is applicable to those institutions offering degrees above the associate level (Section 1.1). If an institution gains initial authorization through the Community and Technical College Council to offer associate degrees in West Virginia and later expands to offer baccalaureate degree programs, it would need to gain authorization for those programs through the Commission. That is the intent of the policy. All programs beyond the associate degree level are subject to approval by the Commission. No change made.

Comment: Section 6.7 says these schools shall be governed by provisions of Title 133 Series 35 Correspondence, Business, Occupational and Trade Schools administered by the Council, but they don't specifically say those schools are exempt from the provisions of this rule.

Response: Section 6.7 restates that these schools are exempted from this rule. Additionally, Section 4.1.b specifically notes that correspondence, business, occupational and trade schools that offer nothing higher than a specialized associate degree are exempted from the provisions of this policy and are regulated by West Virginia Code §18B-2B-9. No change made.

Comment: Section 3.16 – The definition of unearned tuition does not reflect commonly recognized and accepted accounting practice. Unearned tuition is the tuition received at the beginning of any given school term. It is unearned when it is taken in, but it is earned by the end of the term. The definition in this section is merely gross tuition revenues, less refunds.

Response: Section 3.16 will be revised to read “Unearned tuition” means the portion of tuition for which the institution has not fulfilled its contractual agreement. Change made.

Comment: Sections 2.2 and 3.11 define ways that physical presence can be evidenced, not limited to only having a physical location in the state. The definition should be revised and prefaced with a statement defining physical presence as “owning, operating, or renting a physical location...” so that if an institution does not meet this definition of physical presence, they are exempt from the rule the further examples of physical presence as defined in Sections 3.11.a through 3.11.f.

Response: It is the intent of the policy to define “physical presence” in ways other than “owning, operating or renting a physical location...” If this definition is used, the Commission would relinquish supervisory authorization over many institutions which operate within West Virginia through a network of internships, paid recruiters and staff, and other creative resource use to avoid state authorization guidelines. Requiring the definition of “physical presence” as included in Series 20 provides additional consumer protection for West Virginia residents. No change made.

Comment: Section 9.1.d.4 states, “...The institution must employ at least one full-time faculty for each major.” It was suggested that the word “major” be changed to “degree program” so that the requirements is clearer.

Response: Section 9.1.d.4 will be revised to read: “...The institution must employ at least one full-time faculty member for each degree program.” Change made.

Comment: Section 9.1.d.4 states: “...The institution must employ at least one full-time faculty for each major.” It was suggested that a caveat be added that states that “The Commission, at its discretion, may waive this requirement for degree programs that do not warrant having at least one full-time faculty member due to a small enrollment size.

Response: The requirement for one full-time faculty member for each degree program is not an undue hardship; rather we believe that it will set standards for quality that are essential in curriculum approval. No change made.

Comment: Section 9.1.g.2.A requires that “An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty, including at least one instructional faculty member teaching in each program, shall hold a doctoral or other terminal degree.” The comment suggested that we strike the words “including at least one instructional faculty member teaching in each program.”

Response: This policy has been reviewed by both independent schools and colleges and public institutions. No concern was shared other than from one on-line school. This faculty standard represents a quality standard for program approval. No change made.

Comment: Section 9.1.g.2.B requires that “All instructional faculty teaching in a program at the master’s, first professional or doctoral level shall either hold a doctoral or other terminal degree; or qualify for a faculty appointment by virtue of scholarly or professional achievements.” The comment received suggested that “Institutions that offer 120 graduate courses shall fulfill this section’s requirements if at least 90 percent of the graduate courses are taught by faculty holding a doctoral or other terminal degree with the remaining 10 percent holding at least a master’s degree in the subject area taught.”

Response: The generally accepted standard for higher education faculty degree qualifications is that the faculty member must possess at least one degree higher than the degree program in which he teaches. An alternative is also provided in the policy to allow for expertise in the field, qualifying the faculty by virtue of exceptional experience or achievement. No change made.

Comment: A comment highlighted a typographical error in Section 6.1 of the rule.

Response: Section 6.1 of the policy should read “No institution may advertise, solicit, recruit, enroll, or operate a postsecondary education institution until it is authorized for operation in the state of West Virginia by the Commission.” Change made.

Comment: Section 9.2 makes reference to another section of the rule (Section 13) regarding reporting requirements. The reference should be made to Section 14.

Response: Section 9.2 has been revised to make reference to “...reporting requirements in Section 14 of this rule...” Change made.

SUMMARY OF CHANGES

Section 4.1.b.2 has been deleted and replaced by the current Section 4.1.b.3.

Section 3.16 will be revised to read “Unearned tuition” means the portion of tuition for which the institution has not fulfilled its contractual agreement.

Section 9.1.d.4 will be revised to read: “...The institution must employ at least one full-time faculty member for each degree program.”

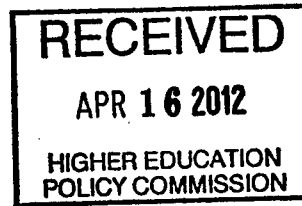
Section 6.1 of the policy should read “No institution may advertise, solicit, recruit, enroll, or operate a postsecondary education institution until it is authorized for operation in the state of West Virginia by the Commission.”

Section 9.2 has been revised to make reference to “...reporting requirements in Section 14 of this rule...”




West Virginia Independent Colleges & Universities


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April 13, 2012
Via Electronic Mail
schumaker@hepc.wvnet.edu




Ashley Schumaker
Senior Director of Board and Public Relations
West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard East, Suite 700
Charleston, WV 25301




RE: Proposed Series 20, Reauthorization of Degree Granting Institutions, and
Proposed Series 52, Annual Reauthorization of Degree Granting Institutions

Dear Ms. Schumaker:




Thank you for the opportunity to review, and comment upon, the proposed Series 20 and Series 52 rules of the West Virginia Higher Education Policy Commission (HEPC), which relate to the authorization and reauthorization of degree granting institutions. The private colleges and universities that comprise the West Virginia Independent Colleges and Universities have studied both series carefully and have earlier provided extensive comment on the original draft of Series 20. As you are aware, the private colleges and universities had significant concerns about a number of elements of the original draft of Series 20. To HEPC's great credit, those concerns were, to a large extent, effectively addressed by the revision of Series 20 and the origination of Series 52. We really appreciate HEPC's responsiveness to those concerns.

The proposed rules are greatly improved by separating the initial authorization process from the annual reauthorization process. The authorization process must be a vigorous one, while the reauthorization process need not be as extensive. The revised drafts of the two rules have significantly improved the process by focusing on the authorization process and reducing the burdens associated with reauthorization. We applaud these changes.



We also appreciate and share HEPC's concerns about the protection of student consumers in West Virginia, which both rules address. We agree that there are problems in the higher education marketplace that require HEPC's oversight and supervision and that Senate Bill 375 as passed in the regular session of the 2011 legislature, together with the proposed rules, are appropriate measures to address those problems.



Our concerns regarding the current drafts of Series 20 and 52 have been significantly mitigated by the recent revisions to the draft of Series 20 and the promulgation of Series 52. Some concerns, however, remain.

We are puzzled by how the student consumer's interest is enhanced by exempting West Virginia University and Marshall University from the application of these rules. An explanation does not appear within the four corners of Series 20, and logic and public policy fail to fill that gap. We suggest that if the exercise of reauthorization enhances the protection of some student consumers in some institutions, it would enhance the protection of all student consumers if extended to all institutions of higher learning in the state.

We **encourage** the Commission to focus on the makeup and operation of the review committee. As currently drafted, the rule anticipates a review committee made up of representatives of public institutions. We think this is shortsighted. We would strongly urge this portion of the rule be revised so that the review committee includes representatives from the **private sector** as well. This will add to the perspectives of the review committee and help to assure the private colleges and universities that (a) the review process will recognize the inherent differences between public and private institutions of higher learning and (b) representatives from the public sector will not have full control over the practices, policies, and reauthorization of private institutions.

Once again, we appreciate the opportunity to comment informally on the draft rules. This is an opportunity to contribute to the improvement of the rules, which we consider to be important, not only for the interest of private colleges and universities, but to the entire system of higher education throughout the state. Toward that end, we ask that the Commission continue to generously solicit our comments in the development of any policies that affect private colleges and universities.

Finally, West Virginia's private colleges and universities have functioned very well for most of West Virginia's history without excessive oversight or review by the state. As a former member of the West Virginia House of Delegates once said, "If it ain't broke, don't break it." Once again, we recognize the need to protect student consumers. However, we do not think that the problems being addressed by Series 20 and 52 exist in the state's traditional private colleges and universities, and we ask that the Commission exercise constraint in the annual reauthorization process, as described in Series 52.

Thank you again for the opportunity to comment, both formally and informally, on these proposed rules. Please do not hesitate to call upon any of the presidents of the colleges and universities should questions arise with regard to these comments.

Dr. Daniel Anderson
President, Appalachian Bible College

Dr. Pamela Balch
President, West Virginia Wesleyan College

Mr. Richard Beyer
President, Wheeling-Jesuit University

Mr. Richard Creehan
President, Alderson-Broadus College

Dr. Scott Miller
President, Bethany College

Dr. Harold Shank
President, Ohio Valley University

Dr. Michael Mihalyo
Chancellor, Davis and Elkins College

Dr. Edwin Welch
President, University of Charleston

Kathy Butler

From: John.Peek [John.Peek@glennville.edu]
Sent: Sunday, June 03, 2012 3:27 PM
To: Kathy Butler
Cc: John.Peek
Subject: Series Suggestions

Kathy,

I have the follow questions and suggests regarding Series 10, Series 20, and Series 52.

Series 10

Section 5.5 Is it really necessary to submit the "comprehensive institutional self-study" ? Is not the letter of conferral sufficient?

Section 5.6.a. Revise to read "first regularly scheduled post-approval audit or first five-year program review following the effective date of this series."

Is this the appropriate place to stipulate the requirements for a second degree – A second bachelor's degree requires the completion of 30 hours beyond the awarding of the first degree.

Is this the appropriate place to note the HLC requirement of 30 of the last 60 hours of bachelor's degree at the degree granting institution?

Section 5.6.a.3 Next to last line. Change "ot" to "to"

Series 20

Following Section 3.11.f Add " in West Virginia" after "local school districts."

Section 5.3 This appears to be inconsistent with other statements in the document.

Section 8 Hard to follow.

Section 9.2 Should the reference here be to Section 13 or another section?

Section 10.3 Why is there a reference to Section 8?

Series 52

Section 2.9 As this statement is vague, it might be a good idea to add at the end of the sentence the following (See Section 4.1)

Section 5.3 Delete this statement as the same purpose is served by Section 5.8 as well as Section 5.9.

Section 5.10.a Should not the HEPC cover the cost of these visits for WV state colleges and universities?

Section 5.10.e Should this section provide for another stage in the process of reauthorization, such as a required improvement plan and/or probationary status?

This seems to be implied in Section 10, but neither section is explicit in this regard.

Section 6 Does the language in Section 2.7 need to be repeated here?

Section 9.4 Does the exemption include late fees?

Section 10.1 Need to clarify the process following the submission of an improvement plan and suspension of a program.

Section 10.2.a Does a SPA conditional or probationary status qualify as a warning? What qualifies as adverse action?

Section 10.2.c Revise, simplify.

I hope these questions and suggestions are of some assistance.

Respectfully,

John M. Peek

Kathy Butler

From: Lee, Brittney [Brittney.Lee@bridgepointeducation.com]
Sent: Thursday, June 21, 2012 11:45 AM
To: Kathy Butler
Cc: Schray, Vickie
Subject: Ashford University and University of the Rockies - Public Comments to the West Virginia Higher Education Policy Commission
Attachments: Ashford University and University of the Rockies - Public Comments to the West Virginia Higher Education Policy Commission.pdf

Dear Dr. Kathy Butler:

Thank you for the opportunity to provide public comments to the West Virginia Higher Education Policy Commission's Proposed Amendments to Title 133, Legislative Rule, West Virginia Higher Education Policy Commission, Series 20: Initial Authorization of Degree-Granting Institutions.

Ashford University and University of the Rockies submit the attached public comments for consideration. Should you have any questions, please feel free to contact Brittney Lee at 866.475.0317 x 1776 or Brittney.lee@bridgepointeducation.com.

Sincerely,

Vickie L. Schray

Vickie Schray Vice President, Regulatory Affairs
Bridgepoint Education *Higher access to higher education*
13500 Evening Creek Drive North Suite 600
San Diego, CA 92128
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Proposed Amendments to Title 133, Legislative Rule
West Virginia Higher Education Policy Commission, Series 20:
Initial Authorization of Degree-Granting Institutions

Thank you for the opportunity to provide public comments to the West Virginia Higher Education Policy Commission (Commission)'s Proposed Amendments to Title 133, Legislative Rule, West Virginia Higher Education Policy Commission, Series 20: Initial Authorization of Degree-Granting Institutions. Ashford University and University of the Rockies submit the following comments:

1. On page 1, as proposed, section 2.2 reads:

...The provisions of this rule shall also apply to any course or programs delivered in the State by an out-of-state institution via distance education-based instruction if the institution will have a physical presence in the State.

On page 3, as proposed, section 3.11 reads:

“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:...

(emphasis added).

Pursuant to sections 2.2 and 3.11, an out-of-state institution that delivers courses and/or programs in West Virginia via distance education-based instruction and does **not** conduct any of the items listed in 3.11 and 3.11.a. through 3.11.f. may be deemed as having **no** “physical presence” as defined by section 3.11 and is, therefore, outside the scope of Series 20: Initial Authorization of Degree-Granting Institutions (Series 20). However, under section 3.11, by including the word “online” after the words “actual presence in the state,” the Commission may unintentionally deem all out-of-state institutions as having an “actual presence in the state,” and therefore a “physical presence” even if the institution has no physical location in West Virginia, does not conduct any activities listed in 3.11.a. through 3.11.f., and only delivers courses or programs via distance online instruction to West Virginia students.

In other words, we are unclear as to what types of out-of-state institution that offer courses/programs via distance education-based instruction are intended to be outside the scope of Series 20 pursuant to section 2.2. For clarification, we recommend adding the following language to section 2.2 so that it reads:

2.2. Prior to offering any course or degree program above the associate level in the State as specified in section 6 of this rule, the entity shall apply to the Commission for authorization to operate in the State. The provisions of this rule shall also apply to any course or programs delivered in the State by an out-of-state institution via distance education-based instruction if the institution will have a physical presence in the State. **An out-of-state institution that solely delivers a course or program in the State via distance online instruction with no physical presence in the State, as defined in section 3, and with no physical location in the State, is exempt from the provisions of this rule.**

Additionally, we recommend adding the following language to section 3.11 so that it reads:

3.11. "Physical presence" means an actual presence in the state, ~~online or on-site~~ **owning, operating or renting a physical location**, 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:

3.11.a. An instructional site within the state.

3.11.b. Dissemination of an educational credential from a location within the state.

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

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

3.11.e. Instructional delivery that receives assistance from any other organization within the State in that delivery.

3.11.f. 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 Commission and local school districts.

An institution that does not participate in any items listed in 3.11.a through 3.11.f and does not own, rent or operate a physical location in West Virginia for purposes of conducting activity related to: a

postsecondary educational institution; educational service; dissemination of educational credentials; enrollment; solicitation or advertising is exempt from this definition.

2. On page 21, section 9.1.d.4. states: "...The institution must employ at least one full-time faculty for each major."

We would like to clarify the meaning of "major" as stated in the above rule. Many institutions have substituted the traditional term "major" with "program," "degree program" and/or "program type" to refer to the area of study, in which a student will earn his/her degree. As such, we are concerned that the requirement of employing "at least one full-time faculty for each major" will unintentionally create a requirement that many institutions cannot comply with simply due to differing terminology.

Additionally, to meet the needs of a diverse student body, institutions now offer both an Associate of Arts (AA) degree and Bachelor of Arts (B.A.) degrees in the same program, e.g. an AA in Early Childhood Education as well as a B.A. in Early Childhood Education. For these institutions, the same full-time faculty member has oversight of both the AA and B.A. programs. As such, it may be unnecessary and overly burdensome for an institution to have "at least one full-time faculty" for both the AA and B.A. programs.

Further, because some degree programs focus on very specific areas, often there is limited enrollment. In these cases, a full-time faculty member is not necessary to adequately meet the needs of the small number of students enrolled in the degree program.

To resolve the above concerns, we suggest revising section 9.1.d.4. so that it reads:

... The institution must employ at least one full-time faculty for each ~~major~~ **degree program above the baccalaureate level. The Commission, at its discretion, may waive this requirement for degree programs that do not warrant having at least one full-time faculty due to small enrollment size.**

3. On pages 23-24, section 9.1.g.2.A. reads:

An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty, including at least one instructional faculty member teaching in each program, shall hold a doctoral or other terminal degree. All other instructional faculty members who teach in programs at

the baccalaureate level shall either:

- Hold a master's degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

As stated in section 9.1.g.2.A. above, the majority of higher education institutions require its associate faculty to hold at least a master's degree and its full-time faculty to hold terminal degrees. Due to this requirement, at least one-third of its instructional faculty at the baccalaureate level holds a doctoral or terminal degree. We believe that by satisfying the above mentioned requirements alone, an institution can "ensure that each full-time, part-time or adjunct instructional faculty member holds academic credentials appropriate to the degree level of the programs or programs in which the faculty member teaches" pursuant to 9.1.g.2.

However, further requiring that each baccalaureate level program have at least one instructional faculty member that holds a doctoral or terminal degree seems overly burdensome without added purpose for many institutions that already require its faculty to have a minimum of a master's degree and that already have one-third of its faculty who possess a terminal degree. As such, we suggest revising section 9.1.g.2.A. to read:

An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty, ~~including at least one instructional faculty member teaching in each program,~~ shall hold a doctoral or other terminal degree. All other instructional faculty members who teach in programs at the baccalaureate level shall either:

- Hold a master's degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

4. On page 24, section 9.1.g.2.B. states:

All instructional faculty teaching in a program at the master's, first professional or doctoral level shall either:

- Hold a doctoral or other terminal degree; or

- Qualify for a faculty appointment by virtue of scholarly or professional achievements.
(emphasis added).

We are concerned that the above section sets an overly strict and unreasonable requirement for many online distance education instructed institutions given the number of courses that are offered. For instance, 90 to 92 percent of University of Ashford's 148 graduate courses are taught by doctoral prepared faculty. We believe that a 90 percent benchmark would be more reasonable for institutions that offer such a large number of courses. Additionally, while section 9.1.g.2.B. allows for a faculty member to "qualify for a faculty appointment by virtue of scholarly or professional achievements," this second option often is not met if the faculty member does not have a doctoral or other terminal degree. We hope that the Commission would be open to a more reasonable standard such as a 90 percent versus a 100 percent requirement when taking into account the number of courses and programs an institution offers. As such, we suggest revising section 9.1.g.2.B. to read:

All instructional faculty teaching in a program at the master's, first professional or doctoral level shall either:

- Hold a doctoral or other terminal degree; or
- Qualify for a faculty appointment by virtue of scholarly or professional achievements.

Institutions that offer over 120 graduate courses shall fulfill this section's requirements if at least 90 percent of the graduate courses are taught by faculty holding a doctoral or other terminal degree with the remaining 10 percent holding at least a master's degree in the subject area taught.

Kathy Butler

From: Vandalia [vandalia@wvjc.com]
Sent: Tuesday, June 19, 2012 11:32 AM
To: Kathy Butler
Cc: Michael Callen
Subject: Comments to proposed rules
Attachments: Comments Higher Education Commission.pdf

Dear Dr. Butler:

I am writing this email to make comments on proposed rules: 1) Title 133 ~~Series 203~~ Initial Authorization of Degree-Granting Institutions and 2) Title 133 Series 52 – Annual Reauthorization of Degree-Granting Institutions. Attached are my comments to both rules. I would be happy to discuss/clarify any questions you may have after you have reviewed the enclosures. My office phone number is 304-296-8284.

Sincerely,

Michael K. Callen
General Counsel
West Virginia Junior Colleges

Attachment

Comments to Title 133 Series 20
Initial Authorization of Degree-Granting Institutions

1. Subsection 4.1.b – As I understand the intent of the rule, institutions licensed under 18B-2B-9 which do not offer degrees above the associate level would fall under the Council’s jurisdiction and would be exempt from these rules. (The rule itself specifically states that it deals with degree-granting institutions which offer degrees above the associate level. Also, the authorizing statute, West Virginia Code 18B-4-7 specifically refers to the “Council” which oversees institutions offering associate degree and lower level programs.) Therefore, I think subsection 4.1.b should be modified to clarify the criteria and to comply with the statute and with the expressed intent of the rule as follows:
 - A. The word “specialized” in front of “associate degree” in section 4.1.b.1 unnecessarily introduces confusion. The lines between different types of associate degrees tend to be blurry, but the difference between obtaining an associate degree and a bachelor degree is quite clear. Therefore, I suggest dropping the word “specialized”.
 - B. Subsection 4.1.b.2 creates the requirement that institutions “typically do not pursue regional accreditation...” This is extremely vague. What does “typically” mean? There is one institution license under 18B-2B-9 that did receive regional accreditation years ago, but most if not all the other institutions are nationally accredited. Does the regionally accredited fall within that subsection – and what about all the others? (Also, type of accreditation would seem to be irrelevant.) This introduces unnecessary confusion; therefore, this requirement should be dropped altogether.

2. This rule establishes an approval/accreditation mechanism for: “...degree-granting institutions which offer degrees above the associate level...” as stated in subsection 1.1 which describes the purpose or scope of the rule. Likewise, the authorizing code section cited in the rule (WV 18B-4-7) specifically authorizes setting minimum standards for degrees; however, several subsections within the rules appear on their face to expand the rule far beyond degree-granting institutions (then different subsections attempt to exempt out institutions not included under the authorizing statute or the rule). In this manner, various subsections tend to be misleading. The actual intent can be ascertained only by comparing several subsections in one section with several subsections in other sections, and reference to those latter subsections is not made in the earlier subsections containing the overly broad language. This is a laborious and linguistically tricky situation. It would be much simpler and much less confusing to simply define institutions using the straightforward language to correctly define the institution in the first place. The following are three examples of the overly broad language that can easily be misinterpreted:
 - A. Subsection 2.1 states in part: “Authorization is required for all postsecondary providers...” and other language refers to “...programs or credit bearing academic courses of higher learning....” On its face, this language is beyond the scope of statutory authority. West Virginia Code section 18B-4-7 grants authority only for setting standards for conferring **degrees** [18B-4-7(a)(b)(d)(e)]. As you are aware, there can be postsecondary institutions which offer non-degree training.

This subsection also purports to grant jurisdiction over any entity using the terms such as “academy”, “college”, “institution” or “university” in its title. This would also appear to exceed statutory authority, because again, the Code mentioned above grants authority only to set minimum standards for degrees. (Also, see the next paragraph.) (Note: I realize there are exemptions in the rules that would exclude many of these institutions, but considering how broad the language is in subsection 2.1, 3.7, 3.8, 3.10, as noted below, perhaps these sections should be narrowed down or the exemption section expanded to avoid inadvertently bringing under the rule institutions that the Commission didn’t intend to bring within the rule and it has no authority to regulate in any event.)

- B. Similar problems exist with the definition of “institution” in subsection 3.10. Specifically, section 3.10.b includes not only entities which offer degrees, but any “...other indicia of a level of educational attainment beyond the secondary school level...” There are institutions which offer postsecondary training below the degree level. I don’t believe the Commission was interested in regulating these institutions; most or all of which fall under the Council’s jurisdiction, anyway. Likewise section 3.10.c brings in any entity that uses the term “college” or “university”. At one time there was (and may still be) a dog training facility in West Virginia that had the title West Virginia Canine College. Also, cosmetology institutions frequently include the word “college” within their name. Surely, the Commission does not want to be regulating beauty colleges. For example, the Morgantown school is called the “Morgantown Beauty College”. (The same problem exists with subsection 5.2.)
 - C. Subsection 3.7 – For the reasons stated above, the definition of “degree” and “degree program” in subsection 3.7 and 3.8 are also too broad. For example, taking an 11.5 month course from a postsecondary vo-tech school which results only in a “Certificate of Completion” credential does not create a “degree” by any commonly accepted definition. Therefore, these sections are beyond the scope of statutory authority, and would include institutions that I do not believe the Commission intended to be included within the rule.
3. Some of the subsections under 133-20-6 are subject to interpretation in a manner that is inconsistent with other sections. (Also, many of the subsections in this section could be eliminated altogether if the definition of the type of “institution” was tightened up. In addition, many of the subsections defining “institutions” could be eliminated, as well.) For example:
- A. Subsection 6.1 purports to give the Commission authority to authorize all “institutions”. As noted above, the definition of institution is so broad that it could include a beauty college or a dog training academy.
 - B. Subsection 6.4 requires institutions offering degrees not above the associate degree level to register with the Council and meet its authorization criteria. This could be read along with subsection 6.1 to indicate that certain institutions must be authorized by both the Commission and the Council.
 - C. Subsection 6.7
 - 1. Likewise, subsection 6.7 starts out saying “institutions” are authorized under this rule. Since the word “institutions”, as defined in a very broad manner under this rule that would even require some cosmetology schools to be authorized by the Commission.

2. Subsection 6.7 then goes on to say that institutions, such as “correspondence, business, occupational, and trade schools” exempted under the provisions of section 4 of this rule shall be governed by Title 135 Series 35 correspondence, business, occupational, and trade schools, administered by the Council. However, subsection 6.4 states: “All institutions, with the exception of correspondence, business, occupational, and trade schools as defined by Series 35, *Correspondence, Business, Occupational and Trade Schools*, of the Council for Community and Technical Education, offering degrees not above the associate degree level shall register with the Council...” Trying to read these two sections together is difficult at best. As explained to me by Chancellor Skidmore, it is the intention of these rules to keep these schools authorized under Title 133 Series 35 *Correspondence, Business, Occupational and Trade Schools* under the Council, and I believe that was the intent of these rules. However, as I read subsections 6.4 and 6.7 together, they actually cancel out each other, meaning that correspondence, business, occupational, and trade schools under Title 135 Series 35 would be under both the Commission and the Council.
3. Also, subsection 6.7 says these schools shall be governed by provisions of Title 133 Series 35 *Correspondence, Business, Occupational and Trade Schools* administered by the Council, but they don’t specifically say those schools are exempt from the provisions of this rule. This could also be read that the schools must both register with Council and fall under the provisions of this rule. I suggest these subsections be rewritten to clarify the intent. While the language used in the Code is rather out of date, any institution that has to register with the Council is referred to under the category of “correspondence, business, occupational, and trade school”, which rule 6.4 excludes.

In summary, I believe that initially writing a concise, plainly understood definition of degree-granting institutions would make the rules much more readable and understandable. Also, it could eliminate several of the different subsections which interact with each other and require an individual to refer back and forth to various subsections in order to understand the actual intent of the rule. As written, it is just too complicated and confusing.

4. Subsection 3.16 – The definition of unearned tuition does not reflect commonly recognized and accepted accounting practice. Unearned tuition is the tuition received at the beginning of any given school term. It is unearned when it is taken in, but it is earned by the end of the term. The definition in this subsection is merely gross tuition revenues, less refunds.

Kathy Butler

From: mkc mkc [mkc@wvjc.com]
Sent: Monday, June 25, 2012 3:20 PM
To: Kathy Butler
Subject: Comments to proposed rules

Dr. Butler:

Thank you for your comments. I did understand that they would not apply to WVJC or any other institution not offering above the associate degree level; however, I decided to review them anyway. I do have a significant concern about the way the exemption language is worded in subsection 4.1.b in Series 20 and subsection 4.3.a in Series 52. As I explained in my comments, I really think that the language "muddies the water" unnecessarily. Also as I noted, language in some of the other subsections which impacts the exemption sections appeared to be unclear. I did mention those subsections in my comments. Besides subsection 4 in each Series, I am particularly concerned about section 6 in Series 20. I had a difficult time putting together subsection 6.4 and 6.7; frankly, I really don't think they carry out the intent as written and I think those subsections need reviewed and revised.

Again, thank you for your prompt response. I hope my comments are of some help; as you know, I am a stakeholder in West Virginia Higher Education and I will do my best to support and advance it whenever I can.

Sincerely,

Mike Callen

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Initial Authorization of Degree-Granting Institutions

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301
Contact: Dr. Paul L. Hill, Chancellor

Phone Number: 304-558-0699 Email: chancellor@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Initial Authorization of Degree-Granting Institutions

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There will be no effect on cost or revenue.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: August 10, 2012

Signature of Agency Head or Authorized Representative
