

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FORM #7

Effective Date

Feb. 4, 1994

NOTICE OF AN EMERGENCY RULE

AGENCY: State College System Board of Directors TITLE NUMBER: 131

CITE AUTHORITY: WV Code 18B-5-2(b)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 5

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

Resource Allocation Policy

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Pursuant to provisions of WV Code 18B-5-2(b), the legislature determined that an emergency exists and authorized the governing boards to establish by emergency rule a resource allocation policy.

Use Additional Sheets If Necessary.

Marie Carter
Signature

3.20

**TITLE 131
LEGISLATIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 5**

TITLE: RESOURCE ALLOCATION POLICY

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes the Resource Allocation Policy for distribution of state operating funds within the State College System.
- 1.2 Authority - West Virginia Code § 18B-5-2(b)
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. PURPOSE

Section 18B-5-2(b) of the West Virginia Code mandates that each higher education governing board shall have a Resource Allocation Policy (RAP) for distribution within its system of all new state funds and for redistribution of existing base budgets to affect an equalization of the institutional funding differences at twenty percent (20%) per year over a five-year period, beginning with the 1994-95 fiscal year. The RAP for the State College System shall utilize the formula described in Section 3 of this rule for redistribution of the base budgets and for distribution of ninety percent (90%) of any additional state funds that may be appropriated each year to the System. The remaining ten percent (10%) of any available new state appropriations shall be used for special priorities determined each year by the Board of Directors.

SECTION 3. METHOD OF CALCULATION

The chancellor shall calculate the RAP formula in August of each year based on the following method:

- 3.1 Enrollment - Each institution's FTE enrollment for the most recent fall semester shall be calculated for those students who paid tuition and fees or who have been granted waivers within the provisions of Series 49 of the

State College System Rules. Students enrolled in courses paid for by third-party sponsors or in any other courses for which that student did not pay tuition and fees shall not be counted in the RAP formula. Separate figures shall be calculated for off-campus students at the four-year institutions and for on-campus resident students and on-campus non-resident students at all institutions. All enrollment at the free-standing community colleges shall be counted as on-campus enrollment. For on-campus enrollment, one figure shall be calculated for FTE enrollment that is below the average percentage that non-resident students comprise of total enrollment in its peer group category and another figure shall be calculated for FTE enrollment that is above the peer group average. The peer group averages are five percent (5%) for the community colleges and twelve percent (12%) for the four-year colleges.

3.2 Target Per-Student Appropriation

3.2.1 On-Campus Resident Students and On-Campus Non-Resident Students Below Peer Group Average - For all on-campus resident students and for those on-campus non-resident students below the appropriate peer group average (12% for four-year colleges and 5% for community colleges), the target appropriation per FTE student shall be the weighted average of state and local funds appropriated per FTE student during the previous fiscal year by the other SREB states to the institutions in the appropriate SREB category of peer institutions.

3.2.2 On-Campus Non-Resident Students Above Peer Group Average - If an institution's percentage of total enrollment made up of non-resident students is higher than that institution's peer group average, the target appropriation per FTE student above the peer group average shall be calculated as sixty-seven percent (67%) of the target per-student appropriation calculated for that institution in Section 3.2.1 of this rule. This reflects the fact that the average appropriation plus the average tuition and fees per FTE student in the other SREB states is approximately thirty-three percent (33%) higher for non-resident students than for resident students, reflecting the fact that non-resident students are expected to pay a higher proportion of the total cost of their education than resident students.

3.2.3 Off-Campus Students - For all off-campus enrollment at four-year institutions, the target appropriation per FTE student shall be the amount for free-standing community colleges calculated in Section 3.2.1 of this rule, plus the annual amount of tuition. The tuition

amount is added to the community college target appropriation because community colleges are able to use this fee for operating expenses, while four-year colleges must contribute their tuition revenues into the State College System capital fund. The assumption is that four-year colleges should be able to deliver off-campus instruction for approximately the same per-student amount as community colleges.

3.3 Target Appropriation for Engineering Courses and System Services

3.3.1 Engineering - An adjustment for West Virginia Institute of Technology (WVIT) to reflect the high cost of engineering courses compared with the average cost for courses in other academic disciplines in the State College System shall be calculated as follows:

3.3.1.1 The FTE enrollment in engineering courses at WVIT during the previous fall semester is calculated.

3.3.1.2 The per-FTE appropriation for on-campus instruction used for WVIT is multiplied by twenty percent (20%) to determine the additional amount of state funds per FTE student needed for enrollments in engineering courses.

3.3.1.3 The FTE number calculated in the first step is multiplied by the additional cost calculated in the second step to produce the total amount needed by WVIT to cover the additional costs of engineering courses.

3.3.2 System Services - Of the total of general revenue and lottery funds appropriated to the State College System, .0044335 is allocated to the system services line for travel and other expenses of board members, the salaries and other costs of operation of the chancellor's office, and other expenses related to the governance and administration of the State College System. When the RAP formula is calculated each year, the system services line shall be maintained at .0044335 of the total.

3.4 Indicated Level of State Support - The indicated level of state support for each institution and the system services line shall be calculated by multiplying the on-campus and off-campus FTE enrollment figures times the

appropriate target per-student appropriation figure, plus the target appropriation for engineering and system services.

- 3.5 Actual State Fund Allocation - The actual state fund allocation for each institution and the system services line shall consist of the state general revenue funds and lottery funds allocated for the current fiscal year.
- 3.6 Percentage of Indicated Level of State Support - Each institution's actual state fund allocation shall be divided by its indicated level of state support to calculate its percentage of the indicated level of state support. Also, the overall percentage for the State College System shall be calculated by dividing the total System allocation by the total indicated level of state support.
- 3.7 Reallocated Base Budgets - In order to redistribute existing base budgets to affect an equalization of the institutional state funding differences by the 1998-99 fiscal year, the percentage of indicated state support for each institution and the system services line shall be compared each year with the overall percentage for the State College System and the base budget amounts for the next fiscal year shall be increased or decreased by the amount of money required to reduce by twenty percent the difference between the institution's percentage and the System percentage of indicated state support.
- 3.8 Additional State Funds - The reallocated base budget figure shall be subtracted from the indicated level of state support for each institution and the system services line to determine the amount of additional state funds indicated for each institution and the system services line for the next fiscal year.
- 3.9 Percentage of Additional State Funds - The amount of additional state funds indicated for each institution and the system services line shall be divided by the total amount of additional funds indicated for the State College System to determine the share to be allocated to each institution and the system services line of ninety percent of any additional funds that may be appropriated to the State College System for the next fiscal year.

SECTION 4 APPLICATION

- 4.1 Reallocation of Base Budgets - After the conclusion of each regular legislative session, through the 1998 session, the board shall reallocate the base budgets of the institutions and the system services line for the next fiscal year to reflect the amount calculated as described in Section 3.7 of

this rule. If the Governor mandates a reduction in base budgets during a fiscal year, the base used for calculating the reallocated base budgets for the next fiscal year shall be the reduced base in effect at the time the calculations are run after the conclusion of the legislative session. Once an equalization of the institutional state funding differences has been achieved in the 1998-99 fiscal year, the base budgets shall be adjusted each year thereafter to maintain the base budgets at the same percentage of the indicated level of state support as the System as a whole.

- 4.2 Additional State Funds - If additional state funds are appropriated to the State College System over the base for the previous fiscal year, the board shall distribute ninety percent (90%) of the new funds within the System by the percentages calculated as described in Section 3.9 of this rule. The remaining ten percent (10%) of any additional funds that may be appropriated shall be allocated based on special priorities determined each year by the board.

- 4.3 Reduced State Funds - If the total appropriation of state funds to the State College System for the next fiscal year is less than the current base, the board shall first reallocate the base budgets as indicated in Section 3.7 and then distribute ninety percent (90%) of the amount of the reduction for the next fiscal year by the percentages calculated as described in Section 3.9 of this rule. The remaining ten percent (10%) of the total reduction shall be applied based on factors determined by the board.

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

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Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

September 17, 1993

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler:

As required pursuant to WV Code §§F-2-2, I hereby consent to the promulgation of the proposed rules by the Board of Directors of the State College System of West Virginia as follows:

- (1) Title 131, Series 4, proposing a new legislative rule relating to the acceptance of advanced placement credit;
- (2) Title 131, Series 5, proposing a new legislative rule relating to a policy for allocating resources among institutions within the state college system;
- (3) Title 131, Series 8, proposing a new legislative rule relating to contracts and consortium agreements with public schools, private schools or private industry; and
- (4) Title 131, Series 11, proposing to amend an existing procedural rule relating to program review.

I understand that copies of these proposed rules are already in the possession of the Administrative Law Division. Enclosed are fiscal notes for each of the rules.

Sincerely,



Barbara Harmon-Schamberger
Secretary

cc: Dr. Paul Marion
Dr. John Thralls

4. **Explanation of Overall Economic Impact of Proposed Rule**

A. **Economic Impact on State Government**

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B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.**

This policy will impact each specific institution based on how it rates under the Resource Allocation Policy.

C. **Economic Impact on Citizens/Public at Large**

—

Date: November 17, 1993

Marie Carter
Signature of Agency Head or Authorized Representative

KEN HECHLER
Secretary of State

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February 4, 1994

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State College System Board of Directors


RULE: New Rule, Series 5 Resource Allocation Policy

DATE FILED AS AN EMERGENCY RULE: January 24, 1994

DECISION NO. 6-94

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Feb. 4, 1994
ADMINISTRATIVE LAW DIVISION



KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

WILLIAM H. HARRINGTON
Chief of Staff

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DECISION

EMERGENCY RULE DECISION
(ERD 6-94)

AGENCY: State College System Board of Directors
RULE: New Rule, Series 5, Resource Allocation Policy
FILED AS AN EMERGENCY RULE: January 24, 1994

- par. 1 The State College System Board of Directors (Directors) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Directors filed this emergency rule with supporting documents with the Secretary of State January 24, 1994.

par. 7 It is the determination of the Secretary of State that the Directors has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §18B-5-2(b) reads in part:

The Legislature finds that an emergency situation exists and therefore, the governing boards are hereby authorized to establish by emergency rule a resource allocation policy for each governing board prior to the first day of January, 1994. Either governing board may modify its policy thereafter, such modification to be submitted to the legislative oversight commission on education accountability subject to the provisions of §18A-3A-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Directors has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

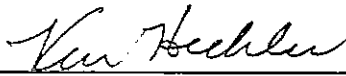
par. 12 The facts and circumstances as presented by the Directors are as follows:

The purpose of Series 5, Resource Allocation Policy is to allocate all funds available to the Board in such a manner as to ensure overall funding equity among the institutions within the system as compared with similar institutions within the SREB (Southeastern Region Educational Board). The Legislature directed that such a policy be developed in SB 377 (1993 Regular Session) and is currently addressed in WV Code §18B-5-2(b). The Code also stipulates that the governing boards are authorized to establish the resource allocation policy by emergency rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation."

par. 14

This decision shall be cited as Emergency Rule Decision 6-94 or ERD 6-94 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State College System Board of Directors, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER

Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Feb 4, 1994
ADMINISTRATIVE LAW DIVISION

Entered _____