

**West Virginia Higher Education Policy Commission
Meeting of September 27, 2019**

ITEM: Approval of Revisions to Series 3, Legislative Rule, Higher Education Report Card

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the revisions to Series 3, Legislative Rule, Higher Education Report Card, to be filed with the Secretary of State and the Legislative Oversight Commission on Education Accountability for further legislative action.

STAFF MEMBER: Chris Treadway

BACKGROUND:

At its meeting of June 14, 2019, the Commission approved revisions to Series 3, Legislative Rule, Higher Education Report Card. With the enactment of Senate Bill 673 during the 2019 legislative session, the higher education data collection and reporting process was modified to reduce cost and improve access to the data for students, parents and citizens. The bill provided for expanded online accessibility of higher education information while minimizing the requirement for published reports. Series 3 sets out the data collection and reporting procedures for the public baccalaureate institutions of higher education.

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

Comment: Draft Series 3, as proposed, indicates that all sections of the draft Series apply to all institutions of higher education. First, draft Section 133-3-5 -- Key Performance Indicators and Goal Setting indicates that the WV Higher Education Policy Commission (“HEPC”) will be setting key performance indicators and goals for all institutions. Under the statutory parameters regarding HPEC’s [sic] mandates, HEPC can “establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter.” WV Code §18-1B-4(9) (emphasis added).

Within Chapter 18B, “state college and university” is defined to mean “Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University or West Virginia State University.” WV Code §18-1-2(26). The three “exempted schools” (i.e., West Virginia University,

including West Virginia University Potomac State College and West Virginia University Institute of Technology, Marshall University, and West Virginia School of Osteopathic Medicine) are excluded from that definition. As a result, this statutory provision does not permit HEPC to set benchmarks and performance indicators for the exempted schools. In light of these statutory parameters, we request that HEPC amend its draft Series 3 to clarify the section on “Key Performance Indicators and Goal Setting” to apply only to the institutions that constitute “state colleges and universities” and not to the “exempted schools.”

Response: *While it is generally understood that rules are drafted in conformance with statutory authority (i.e., an exemption that is stated in a statute exists implicitly in the rule by operation of law), for the sake of clarity, the Commission will revise Section 5.1 of the Rule to state, **“For the institutions under its jurisdiction, and not the exempted schools, the Commission shall adopt a set of key performance indicators. . . .”***

Comment: Second, draft Section 133-3-8 – State Compacts provides that HEPC may enter into state compacts that would be binding on HEPC and “institutions under its jurisdiction,” which appears to be defined to mean all institutions of higher education. Draft Section 133-3-8.4. However, W. Va. Code §18B-1D-7 provides that the exempted schools are not required to enter into state compacts with HEPC or be bound by any state compact that HEPC enters into. Rather, this statute provision regarding state compacts is limited to “state colleges and universities.” Similarly, we request that HEPC amend its draft Series 3 to clarify that the section on “State Compacts” applies to only the institutions that constitute “state colleges and universities” and not to the “exempted schools”.

Response: *While it is generally understood that rules are drafted in conformance with statutory authority (i.e., an exemption that is stated in a statute exists implicitly in the rule by operation of law), for the sake of clarity, the Commission will revise Section 8.4 of the Rule to state, **“For the institutions under its jurisdiction, and not the exempted schools, the Commission shall approve a proposed state compact before it becomes operative and binding on the Commission and the institutions under its jurisdiction.”***