



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Treasurer TITLE-SERIES: 112-18

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Hope Scholarship Program

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§18-31-9

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 02/09/2022

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

04/22/2022

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The emergency rule was filed due to the passage of HB 2013 during the 2021 Regular Session. W.Va. Code §18-31-9 authorizes the Hope Scholarship Board to promulgate emergency legislative rules necessary for the administration of this article. The emergency amendment specifically relates to implementation issues arising due to the July 6, 2022 West Virginia Circuit Court injunction.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

During the 2022 Regular Session of the Legislature, the Hope Scholarship Program was budgeted \$23,350,520 for FY 2023. These dollars fund all eligible Hope Scholarship accounts. The emergency amendment does not affect the funding level for the Hope Scholarship Program or any general revenue monies.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The State Treasurer's Office is provided an administrative fee from the total amount budgeted for the Program pursuant to §18-31-6(h). These monies are deposited into the Hope Scholarship Expense Fund for administration of the program.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
LEGISLATIVE RULE
HOPE SCHOLARSHIP BOARD

SERIES 18
HOPE SCHOLARSHIP PROGRAM

§112-18-1. General.

1.1. Scope. -- This rule provides the administrative requirements of the Hope Scholarship Program.

1.2. Authority. – W. Va. Code §18-31-9.

1.3. Filing Date. –

1.4. Effective Date. –

§112-18-2. Definitions.

2.1. “Academic year” means the period of time occurring between the first day of July and ending on the 30th day of June, during which a student must meet the educational requirements equivalent to an instructional term as provided in W. Va. Code §18-8-1.

2.2. “Account” means the savings account established for an individual Hope Scholarship student, into which the Board deposits the Hope Scholarship funds allocated to said student pursuant to W. Va. Code §18-31-6.

2.3. “Account holder” means the person designated and authorized to administer and manage a Hope Scholarship student’s account according to section 5 of this rule.

2.3.1. For the purposes of a student’s enrollment application, “account holder” refers to the person who applies or submits information on behalf of the potential Hope Scholarship student.

2.3.2. For the purposes of this rule, “account holder” does not include a secondary account holder unless the provision in question clearly and specifically refers to a “secondary account holder.”

2.4. “ACH” means automated clearinghouse, a national EFT network which enables participating Financial Institutions to distribute electronic credit and debit entries to financial institution accounts and to settle the entries.

2.5. “Board” means the Hope Scholarship Board established in W. Va. Code §18-31-3.

2.6. “Curriculum” means a complete course of study for a particular content area or grade level, including any supplemental materials required.

2.7. “Education service provider” or “provider” means a person or organization that the Board authorizes to receive Hope Scholarship funds as payment for providing educational services to Hope Scholarship students.

2.8. “Elementary or secondary public school” means a county school, a public charter school, a virtual public charter school, or any other publicly supported elementary or secondary school in this state.

2.9. “EFT” means electronic funds transfer.

2.10. “Electronic transaction” means an EFT, including, but not limited to, payment by ACH, ACH based electronic check, wire transfer, and online transaction processing.

2.11. “Funds” means Hope Scholarship funds.

2.12. “Hope Scholarship Program” or “Program” means the Hope Scholarship Program, established in W. Va. Code §18-31-1 *et seq.*

2.13. “Hope Scholarship student” or “student” means a student who has successfully applied to the Board and is enrolled in the Hope Scholarship program.

2.14. “Hope Scholarship website” means the website created and maintained to provide program information, program documents, and program forms available to the public.

2.15 “Immediate family”, as used to describe a person’s relationship to a Hope Scholarship student, includes any of the following:

2.15.1. The father or mother of the student, or an ancestor of either;

2.15.2. The grandfather or grandmother of the student, or an ancestor of either;

2.15.3. A brother, sister, stepbrother, or stepsister of the student;

2.15.4. A first cousin of the student;

2.15.5. A stepfather or stepmother of the student;

2.15.6. A brother or sister of the father or mother of the student;

2.15.7. A son or daughter of a brother or sister of the student;

2.15.8. A father-in-law, mother-in-law, brother-in-law, or sister-in-law of the student;

2.15.9. The spouse of the student; or

2.15.10. The spouse of any person described in subdivisions one through nine of this subsection.

2.15.11. Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

2.16. “Individualized Instructional Program (IIP)” means a customized educational experience that takes place either at home or another location. Hope Scholarship students with an IIP are not enrolled in a participating school.

2.17. “Instructional term” means a period of continuous enrollment in the West Virginia public school system for the full academic year. The instructional term refers to the regular 180 instructional days of the public-school calendar in accordance with W. Va. Code §18-5-45.

2.18. “Online portal” means the online system and interface selected and administered by the Treasurer through which parents, vendors, and service providers may complete transactions using Hope Scholarship funds.

2.19. “Scholarship disbursement” means the deposit of Hope Scholarship funds pursuant to section 7.3 of this rule.

2.20. “Student” refers to an individual who is eligible to participate in the Hope Scholarship program according to section 3 of this rule. For the purposes of meeting the application requirements in this rule, an action completed by a designated account holder is considered to be an action completed by the student.

2.21. “Transaction” means a single purchase, payment, or transfer.

2.22. “Treasurer” means the West Virginia State Treasurer or his or her designee.

§112-18-3. Eligibility

3.1. A student is eligible to apply to participate in the Hope Scholarship Program if the student:

3.1.1. Is a resident of the State of West Virginia;

3.1.2. Has not successfully completed a secondary education program;

3.1.3. Is under 21 years of age; and

3.1.4. Meets one of the following criteria at the time an enrollment application is submitted:

3.1.4.a. The student is eligible to be enrolled in a kindergarten program in West Virginia according to W.Va. Code §18-8-1a; *Provided*, That if a student has not yet attained the age of five by July 1 and would not be eligible to be enrolled in a kindergarten program under the provisions of W. Va. Code §18-5-18, the student may become eligible for a Hope Scholarship if the student successfully enrolls in a public kindergarten program in West Virginia through the public kindergarten program’s early entrance process. If a student who has not yet attained the age of five by July 1 and who is unable to enroll in a public kindergarten through an early entrance process otherwise attends a kindergarten program authorized under W.Va. Code §18-8-1a, that student is considered an existing private school or homeschool student who must meet the eligibility requirement under subdivision 3.1.4.c of this rule to become eligible for the Hope Scholarship Program since the student is no longer eligible for kindergarten.

3.1.4.b. The student was enrolled in an elementary or secondary public school education program in the State of West Virginia for the entire instructional term during the academic year immediately

preceding the academic year for which the student is applying to participate in the Hope Scholarship Program; or

3.1.4.c. The student is enrolled full-time and attending an elementary or secondary public school education program in the State of West Virginia at the time of application and has been enrolled in said program for at least forty-five (45) consecutive calendar days during an instructional term. The student must remain enrolled and attending public school until an award letter is issued by the Board. To meet the attendance portion of this eligibility option, students shall not have unexcused absences during the public-school enrollment period that exceed the threshold to be considered chronically absent, which is ten percent of the calendar days enrolled in the public school.

3.2. Notwithstanding section 3.1, if on July 1, 2024, the participation rate of the combined number of students in the Hope Scholarship Program and students eligible who have applied to participate in the Hope Scholarship program during the previous school year is less than five percent of net public school enrollment adjusted for state aid purposes for the previous school year, then, effective July 1, 2026, a child is considered to meet the requirements of this paragraph if he or she is enrolled, eligible to be enrolled, or required to be enrolled in a kindergarten program or public elementary or secondary school program in this state at the time of application.

3.3. If a Hope Scholarship student becomes ineligible to participate in the program during the academic year based on the criteria in subsections 3.1.1. through 3.1.3., his or her account will terminate as provided in section 10 of this rule.

3.4. According to §18-8-1(m), a parent must provide notice of intent to participate in the Hope Scholarship Program to the county superintendent of the Hope Scholarship student's county of residence.

3.5. A student may appeal an eligibility determination of the Board by filing an appeal according to the procedure in W. Va. C.S.R. §112-19-11.

§112-18-4. Applications.

4.1. Enrollment applications.

4.1.1. An account holder must submit an enrollment application to the Board on a student's behalf in order to enroll the student in the Hope Scholarship program.

4.1.2. The Board will accept enrollment applications from eligible students from March 1 until May 15 of each calendar year, for the academic year beginning on July 1 of that calendar year: *Provided*, That if an application deadline occurs on an official state holiday or a weekend day, the deadline will be the next occurring weekday that is not an official state holiday.

4.1.3. The enrollment application will be on a form prescribed by the Board and will require applicants to provide, at a minimum, the following information:

4.1.3.a. Account holder name;

4.1.3.b. Account holder physical address;

4.1.3.c. Account holder mailing address;

4.1.3.d. Account holder email address;

4.1.3.e. Student name;

4.1.3.f. Student physical address;

4.1.3.g. Student mailing address;

4.1.3.h. Student county of residence;

4.1.3.i. Student date of birth;

4.1.3.j. The student's West Virginia Education Information System (WVEIS) number; and

4.1.3.k. Documentation demonstrating that the student meets the eligibility requirements for participation in the Hope Scholarship program, as required by the Board, including but not limited to, a copy of the student's birth certificate and proof of West Virginia residency. The list of acceptable documents to satisfy proof of West Virginia residency includes the following:

4.1.3.k.1. Two West Virginia utility bills not more than 60 days old from two different companies, not including termination notices;

4.1.3.k.2. Tax records with a West Virginia address matching the address on the application;

4.1.3.k.3. Proof of West Virginia home ownership, such as a mortgage document or homeowner's insurance document;

4.1.3.k.4. A valid West Virginia vehicle registration card;

4.1.3.k.5. A West Virginia Voter's Registration Card;

4.1.3.k.6. Residential rental or lease agreement; or

4.1.3.k.7. Proof of public assistance through the West Virginia Department of Health and Human Resources.

4.2. Renewal applications.

4.2.1. An account holder may renew a Hope Scholarship student's account for each upcoming academic year in which the student is eligible to participate in the program by filing a renewal application on a form prescribed by the Board according to the requirements of this section.

4.2.2. The Board will accept renewal applications from January 15-May 15 each calendar year, for the academic year beginning on July 1 of that calendar year: *Provided*, That if an application deadline occurs on an official state holiday or a weekend day, the deadline will be the next occurring weekday that is not an official state holiday.

4.2.3. A Hope Scholarship student's account will remain open for each academic year for which the account holder renews the account. Any unused funds in a Hope Scholarship student's account at the end of an academic year will remain in a renewed account and carry forward for the student's use during the upcoming academic year so long as their eligibility to participate in the program is maintained.

4.2.4. A Hope Scholarship student who fails to renew his or her account may submit a regular enrollment application to the Board during the regular enrollment period occurring in subsequent academic years: *Provided*, That all funds remaining in the student's account at the end of the academic year will be returned to the State and will not carry forward for use during subsequent academic years.

4.3. A student who was ineligible for the Hope Scholarship Program during the most recent enrollment application period, but who becomes eligible for the Hope Scholarship Program during the academic year by meeting the criteria in subdivision 3.1.4.c. of this rule, may submit an enrollment application to the Board at any time during the academic year. The Board may also accept applications from eligible students who missed the application period in subsection 4.1.2 on a case-by-case basis at any time during the academic year so long as all other eligibility criteria are met.

4.4. All applications described in this section will be available on the Hope Scholarship website.

§112-18-5. Authorized Account Holder.

5.1. An enrollment application must designate one eligible person to serve as the account holder for the student's Hope Scholarship account. The account holder will be authorized to expend and manage Hope Scholarship funds on behalf of the Hope Scholarship student. The following persons are eligible to serve as account holder:

5.1.1. The student's biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a Hope Scholarship student as determined by the Board; or

5.1.2. The student, if the student is 18 years of age or older on or before the first day of the academic year.

5.2. The Board may allow an account holder to designate one secondary account holder for a Hope Scholarship account. A secondary account holder must meet the account holder eligibility requirements in section 5.1. of this section. (For example, if a mother with legal custody of her child is the primary account holder for her child, a father with legal custody of the child may be designated as the secondary account holder).

5.2.1. A secondary account holder's authority to use Hope Scholarship Funds is limited to completing purchases on behalf of the Hope Scholarship student using the online portal. A secondary account holder will access the student's Hope Scholarship account via an online portal user account that is separate and distinct from the primary account holder's user account.

5.2.2. The primary account holder may remove a secondary account holder from the account at any time by submitting a request to the Board on a form prescribed by the Board.

5.2.3. A secondary account holder must enter into the Account Holder Contract required in section 6 of this rule prior to gaining access to Hope Scholarship funds.

5.3. If the account holder for a Hope Scholarship student is unable to administer a Hope Scholarship account for any reason, the account holder, a secondary account holder, or the student may file a request with the Board to change the designated account holder at any time during the academic year.

5.3.1. A request to change the designated account holder for an account must be submitted on a form prescribed by the Board.

5.3.2. The Board will approve a request to change the designated account holder if the Board determines that:

5.3.2.a. The account holder consents to the change of account holder or the Board determines that a change of account holder is necessary to ensure that Hope Scholarship Funds may continue to be expended on behalf of the student;

5.3.2.b. The person designated as the new account holder meets the eligibility requirements in section 1 of this rule;

5.3.2.c. The requested change of account holders will not cause an undue disruption to the student's education or access to Hope Scholarship Funds; and

5.3.2.d. The person designated as the new account holder enters into the Account Holder Contract required in section 6 of this rule.

§112-18-6. Account Holder Contract.

6.1. Prior to establishing a Hope Scholarship account, the account holder must enter into a written contract with the Board, agreeing, at a minimum, to the following:

6.1.1. To ensure that the Hope Scholarship student receives an education in at least the subjects of reading, language, mathematics, science, and social studies;

6.1.2. To use the Hope Scholarship funds exclusively for qualifying expenses of the Hope Scholarship student as provided in W. Va. Code §18-31-7 and section 9 of this rule;

6.1.3. To comply with the rules and requirements of W. Va. Code §18-31-1 *et seq.* and this rule;

6.1.4. To afford the Hope Scholarship student opportunities for educational enrichment such as organized athletics, art, music, or literature; and

6.1.5. For a student who chooses an individualized instructional program, to submit the student's annual nationally normed standardized achievement test results or an annual certified teacher's review of the student's academic work to the superintendent of the county of residence, as required by W. Va. Code §18-31-8, no later than June 8 prior to the upcoming academic year;

6.1.6. To authorize the Board, the West Virginia State Treasurer's Office, the West Virginia Department of Education, and the contracted program manager acting on behalf of the Board to exchange all necessary enrollment or other data to confirm initial and ongoing eligibility for the Hope Scholarship Program.

6.1.7. To agree that items purchased with Hope Scholarship funds shall not be resold to other parties.

6.2. The Board will provide the account holder contract to the designated account holder for the Hope Scholarship student at the time of application to the Hope Scholarship Program.

6.3. Failure of an account holder to sign the account holder contract is grounds for the denial of the application for the Hope Scholarship Program.

§112-18-7. Allocation and Distribution of Funds.

7.1. An account holder must establish a Hope Scholarship account with the Board prior to receiving or expending Hope Scholarship funds. The Board will provide the account holder with instructions for establishing an account upon issuance of an award letter indicating the Hope Scholarship student's acceptance into the program.

7.2. All Hope Scholarship transactions will be completed electronically using the online portal.

7.3. The Board will complete scholarship disbursements by electronically depositing Hope Scholarship funds into Hope Scholarship student accounts. The Board will deposit one half of the funds allocated to a Hope Scholarship student for the academic year in the student's account by August 15 of that year and the second half by January 15 of that year.

7.3.1. If a student was ineligible for the Hope Scholarship Program during the most recent enrollment application period but becomes eligible during the academic year, the board shall calculate a prorated amount for the annual Hope Scholarship by reducing the annual amount by a percentage amount equal to the number of the county board of education's instructional days that have elapsed in the student's county of residence since the beginning of the instructional term, divided by 180. The board shall deposit the Hope Scholarship funds into the student's account as soon as practicable after the student's application is approved in accordance with deposit schedule outlined in section 7.3 above, utilizing the assumption that the second half distribution shall be equal to the second half distribution of Hope Scholarship students approved for the full year and the first half distribution shall be the remaining balance of the prorated amount. If approved after January 15th during the year, the full prorated amount will be deposited into the student's account as soon as practicable after the student's application is approved.

7.4. Each Hope Scholarship student will have a separate Hope Scholarship account, regardless of whether multiple Hope Scholarship students reside in the same household or share the same account holder. An account holder may only use funds in an account for the individual Hope Scholarship student to whom the funds were allocated pursuant to W. Va. Code §18-31-6.

7.5. If an account holder renews a Hope Scholarship account, any funds remaining in the account at the end of an academic year will be carried forward and may be used for the student's qualifying expenses in the upcoming academic year.

7.6. If an account holder fails to renew a Hope Scholarship account or the account is terminated for any reason, in accordance with section 10 of this rule, all remaining funds from the account will be returned to the West Virginia Hope Scholarship Program Fund.

§112-18-8. Purchases and Refunds.**8.1. Account Holder Purchases.**

8.1.1. An account holder must complete all payments of Hope Scholarship funds to education service providers and vendors electronically via the online portal.

8.1.2. Reimbursement of Hope Scholarship funds for payments made with non-Hope Scholarship funds will only be considered on a case-by-case basis due to extenuating circumstances. Any reimbursement request shall be made on a form prescribed by the Board and shall require detailed supporting documentation and receipts. Any reimbursement requires approval of the Board.

8.2. Refunds.

8.2.1. All refunds of Hope Scholarship funds by an educational service provider or vendor must be electronically credited directly back to the Hope Scholarship student's account.

8.2.2. An education service provider must notify the Board of an account holder's request for a refund prior to issuing the refund and provide the Board with appropriate documentation reflecting the return of goods or cancellation of services for which the refund will be issued.

8.2.3. If a Hope Scholarship student uses funds to make a partial payment of tuition or fees to an educational service provider to reserve the student's enrollment in a program and the student does not participate in the program, the education service provider must electronically credit said payment back to the Hope Scholarship student's account within 30 days after receiving notice that the student will not participate in the program or after the educational program has commenced, whichever occurs earlier.

8.3. Online Portal Access.

8.3.1. Only an account holder is authorized to access an online portal user account or to complete a transaction using Hope Scholarship funds.

8.3.2. The Board may allow a person who is the account holder for multiple Hope Scholarship students that reside in the same household to access all such accounts through one online portal user account: *Provided*, That individual Hope Scholarship accounts must remain separate and segregated at all times.

§112-18-9. Qualifying Expenses.

9.1. An account holder may only use funds deposited in an account for the Hope Scholarship student's qualifying expenses.

9.2. Expenditures of Hope Scholarship funds for the following purposes are qualifying expenses:

9.2.1. Private or parochial school tuition and fees at a participating school;

9.2.2. Tuition and fees for programs of study, curriculum, or supplemental materials in reading, mathematics, science, social studies, or the arts;

9.2.3. Tuition and fees for programs of study or the curriculum of courses that lead to an industry-recognized credential that satisfies a workforce need;

9.2.4. Tuition and fees for ongoing services that a public school offers to Hope Scholarship students, pursuant to W. Va. Code §18-31-8(f), including individual classes and extracurricular activities and programs: *Provided*, That students participating in the Hope Scholarship Program are subject to all eligibility rules applicable to participation in extracurricular activities governed by the West Virginia Secondary School Activities Commission: *Provided, however*, That Hope Scholarship students attending a participating private school are eligible to receive free services that the public schools otherwise offer to private school students; *Provided, further*, That if a Hope Scholarship student has utilized their funds for other qualified expenses, the student shall be responsible to pay the tuition and fees to the public school from other sources in order to receive such services;

9.2.5. Tutoring services provided by an individual or a tutoring service: *Provided*, That tutoring services cannot be provided by a member of the Hope Scholarship student's immediate family;

9.2.6. Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, any examinations for industry certification exams, and tuition and fees for preparatory courses for the aforementioned exams;

9.2.7. Tuition and fees for nonpublic online or virtual learning programs;

9.2.8. Tuition and fees for alternative education programs;

9.2.9. Fees for after-school or summer education programs;

9.2.10. Fees and materials for enrollment in dual credit or college level courses;

9.2.11. Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

9.2.12. Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider;

9.2.13. The cost of school uniforms required by a participating school;

9.2.14. Vocational supplies or equipment required for a K-12 course of study;

9.2.15. Technology equipment needed for an educational program, including but not limited to computers, printer and required software;

9.2.16. Tuition and fees for programs of study, curriculum, or supplies needed for supplemental or elective educational courses;

9.2.17. Basic educational supplies, including but not limited to, paper, writing utensils, scissors, etc.;

9.2.18. Any assistive technology or other equipment/supplies necessary to accommodate a student with a disability; and

9.2.19. Any other qualifying expenses as approved by the Board.

9.3. An account holder may seek approval of an expense as a qualifying expense by submitting a request to the Board, on a form that will be prescribed by the Board and made available on the Hope Scholarship website.

§112-18-10. Account Termination.**10.1. Nonrenewal.**

10.1.1. A Hope Scholarship student's participation in the program terminates at the end of the academic year for which he or she is enrolled unless the account holder files an application to renew the Hope Scholarship account according to the procedures in section 4 of this rule.

10.1.1.a. The Board will provide written notice to all Hope Scholarship account holders, at least 45 days prior to the end of the renewal application period, informing the account holder of the following:

10.1.1.a.1. That he or she must file a renewal application in order to enroll the student in the Hope Scholarship program for the upcoming academic year;

10.1.1.a.2. That he or she must file a renewal application in order to continue the Hope Scholarship student's account for use during the upcoming academic year;

10.1.1.a.3. That failure to renew the Hope Scholarship student's account for the upcoming academic year will result in closure of the student's current account at the end of the academic year and forfeiture of all unused funds remaining in the account to the State; and

10.1.1.a.4. Instructions on how to file a renewal application with the Board, including all applicable deadlines.

10.1.2. Nothing in this rule prevents an account holder who fails to file a renewal application from re-applying for an account in subsequent years, according to the regular application procedures provided in section 4 of this rule.

10.2. Withdrawal or Ineligibility.

10.2.1. A Hope Scholarship student's participation in the program terminates if any of the following conditions occur:

10.2.1.a. The account holder withdraws the student from the program;

10.2.1.b. The Hope Scholarship student successfully completes a secondary education program;

10.2.1.c. The Hope Scholarship student reaches twenty-one (21) years of age;

10.2.1.d. The account owner fails to submit the information required by subsection 6.1.5 of this rule; or

10.2.1.e. The student is no longer a resident of West Virginia.

10.2.2. If any of the conditions described in this section occur, the Board will notify the account holder that the Hope Scholarship student's account will be closed in 45 days. The Board will close the account if:

10.2.2.a. The account holder does not respond to the notice within 30 days of receipt;

10.2.2.b. The account holder or student does not cure any circumstance making a student ineligible to participate in the program within 45 days of receipt; or

10.2.2.c. The account owner does not provide information within 45 days of receipt demonstrating that circumstances on which the Board is basing the decision to close an account are factually incorrect.

10.3. Noncompliance, intentional misuse of funds, or criminal activity.

10.3.1. The Board may temporarily freeze or direct a hold on the account pending an audit or inquiry into the expenditures or conduct at issue if the Board receives credible information indicating that an account holder or Hope Scholarship student has violated W. Va. Code §18-31-1 *et seq.*; violated the requirements of this rule; or engaged in criminal activity involving Hope Scholarship funds. An account holder will be notified if their account is frozen or being held within 20 days following the change in status.

10.3.2. As required in W. Va. Code §18-31-10, an account holder must submit to any audit initiated by the Board related to Hope Scholarship funds. Upon request, the account holder must provide the Board with all records in the account holder's custody relating to Hope Scholarship fund transactions.

10.3.3. If the Board determines that an account holder or a Hope Scholarship student has violated W. Va. Code §18-31-1 *et seq.*; violated the requirements of this rule; or engaged in criminal activity involving Hope Scholarship funds; the Board may terminate the student's participation in the program and declare the student, account holder, or both permanently ineligible to participate in the Hope Scholarship program.

10.4. Immediately following termination of a Hope Scholarship student's participation in the program for any reason, the Board will close the student's account. Within 20 days following an account's closure, the Board will provide written notice of said closure to the account holder. The notice will provide the reason for the account's closure and notify the account holder of the process to appeal a decision or action of the Board.

10.5. Any funds remaining in a Hope Scholarship account upon the account's closure will be returned to the West Virginia Hope Scholarship Program Fund upon the expiration of any applicable appeal period.

10.5.1. If the account is closed due to the student returning to public school full-time after October 1 of the academic year, upon request of the county board of education of the county in which the public school is located, the funds remaining in the student's Hope Scholarship account shall be transferred to the county board to fund the cost of the student's education for the remainder of the school year. Hope Scholarship students who return to public school full-time during the school year are ineligible to reapply for the Hope Scholarship during the same school year but shall be eligible to apply to participate in the program for the subsequent school year.

10.6. A student or account holder may appeal any action, audit finding, or other determination of the Board by filing an appeal according to the procedure in W. Va. C.S.R. §112-19-11.

§112-18-11. Provider Eligibility

11.1. Only an authorized education service provider may accept Hope Scholarship funds as payment for providing educational services to Hope Scholarship students.

11.2. The Board will authorize an individual or an entity to be an education service provider if that person or entity submits a notice of intent to become an education service provider on a form prescribed by the Board and complies with all requirements of W. Va. Code §18-31-1 *et seq.* and this rule. A person or entity may become an authorized education service provider at any time during the academic year.

11.2.1. A West Virginia county board of education offering services to Hope Scholarship students is automatically considered to be an authorized education service provider and is not subject to the requirements of this section: *Provided*, That prior to receiving Hope Scholarship Funds, the county board of education must sign the Provider Contract described in section 11.3 of this section.

11.2.2. An education service provider receiving more than one hundred thousand dollars of Hope Scholarship funds annually may be required to provide a surety bond upon request of the Board.

11.2.3. The Board may consider entering into reciprocal agreements with other state education savings account agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from Hope Scholarship accounts.

11.3. Provider Contract.

11.3.1. Prior to receiving Hope Scholarship Funds, an education service provider must sign a contract with the Board, agreeing to the following:

11.3.1.a. That the provider will comply with all rules and requirements of the W. Va. Code §18-31-1 *et seq.* and this rule;

11.3.1.b. That the provider will not refund, rebate, or share Hope Scholarship funds with parents or students in a manner inconsistent with any provision of the West Virginia Code or this rule;

11.3.1.c. That the provider will require any employee who will have contact with Hope Scholarship students to submit to a criminal background screening;

11.3.1.d. That the provider will not engage in unlawful discrimination according to state or federal law applicable to the provider in providing educational services to Hope Scholarship students; and

11.3.1.e. In the case of a participating school, that the provider will annually notify the superintendent of the county in which a Hope Scholarship student resides of that student's enrollment in the Hope Scholarship Program, in accordance with W. Va. Code §18-31-11, by no later than June 8. Copies of the annual notifications shall also be provided to the West Virginia Department of Education by the same date.

11.3.1.f. In the case of a participating school, that the provider will annually notify the Hope Scholarship Board of any students participating in the Hope Scholarship Program who graduate from a secondary program offered by the school by no later than June 15.

11.4. Private or parochial schools.

11.4.1. An authorized education service provider that is a nonpublic school must submit a complete copy of its tuition and fee schedule to the Board. The school must provide the Board with advance notice of any changes to the tuition or fee schedule that occur during the academic year.

11.4.2. Upon request of the Board, the nonpublic school must provide the Board with an accounting of all fees and tuition charged to each Hope Scholarship student and an itemized accounting of all of the school's transactions with the student involving Hope Scholarship funds.

11.4.3. The nonpublic school must provide notice to the Board if a Hope Scholarship student withdraws from the school or fails to meet the school's minimum attendance requirements.

11.4.4. As provided in subdivision 11.3.5.e of this rule, the nonpublic school must annually provide notice to the superintendent of the county in which a Hope Scholarship student resides of that student's enrollment in the Hope Scholarship Program by no later than June 8. Copies of the annual notification shall also be provided to the West Virginia Department of Education by the same date.

11.4.5. As provided in subdivision 11.3.5.f of this rule, the nonpublic school must annually notify the Hope Scholarship Board of any students participating in the Hope Scholarship Program who graduate from a secondary program offered by the school by no later than June 15.

11.5. An education service provider is prohibited from requiring a student or a family to pay tuition or fees above the provider's regular tuition or fee schedule based upon a student or family member's participation in the Hope Scholarship program.

11.6. An education service provider may not limit the amount of Hope Scholarship funds that a student may apply towards the provider's tuition and fees.

11.7. An education service provider may not retain Hope Scholarship funds used to pay a deposit or tuition in advance if the student does not ultimately utilize the vendor's services. The education service provider is entitled to only the portion of the Hope Scholarship funds paid to cover any required tuition and fees for the educational services actually rendered to the student.

11.8. If the Board receives credible information indicating that an education service provider has violated W. Va. Code §18-31-1 *et seq.*; violated this rule; or engaged in criminal activity involving Hope Scholarship Funds, the Board may temporarily freeze or direct a hold on the person's or entity's approved provider status pending an audit or inquiry into the expenditures or conduct at issue.

11.9. As required in W. Va. Code §18-31-10, an education service provider must submit to any audit initiated by the Board related to Hope Scholarship Funds. Upon request, the education service provider must provide the Board with access to all records necessary to verify the expenditure of Hope Scholarship funds on qualifying expenses.

11.10. If the Board determines that an educational service provider has intentionally violated W. Va. Code §18-31-1 *et seq.*; violated this rule; or engaged in criminal activity involving Hope Scholarship funds, the Board may terminate the person's or entity's approved provider status and declare the person or entity permanently ineligible to receive Hope Scholarship funds.

11.11. Immediately following termination of a person's or entity's approved education service provider status, the Board will provide written notice of said termination to the provider and to any Hope Scholarship student who has made payments of Hope Scholarship funds to the provider during the academic year. The notice will provide the reason for the account's closure and notify recipients of the process to appeal a Board decision.

11.12. An education service provider may appeal a determination by the Board by filing an appeal according to the procedure in W. Va. C.S.R. §112-19-11.

§112-18-12. Disbursement of Funds and Eligibility Following 2022 Injunction.

12.1. For the purposes of this section, the following terms have the following meanings:

12.1.1. "Full amount" or "full amount of Hope Scholarship funds" means the amount of funds that would have been disbursed to each Hope Scholarship account for students participating in the Hope Scholarship Program during the 2022-2023 academic year for the entire instructional term, if the injunction had not been issued.

12.1.2. "Injunction" or "the injunction" refers to:

12.1.2.a. The preliminary and permanent injunctions that Kanawha County Circuit Court Judge Joanna Tabit granted from the bench on July 6, 2022 in Civil Actions 22-P-24 and 22-P-26, consolidated and styled *State of West Virginia v. Travis Beaver and Wendy Peters*, and as officially entered on July 22, 2022 as the "Final Order Granting Plaintiffs' Motion for Preliminary and Permanent Injunctive Relief and Declaratory Judgment and Ruling on Various Other Motions"; and

12.1.2.b. Any order or other action by a court of competent jurisdiction in the state affirming, upholding, modifying, or continuing the circuit court orders described in 12.1.2.a. of this rule or otherwise preventing or delaying implementation of the Hope Scholarship Program as a result of Kanawha County Circuit Court Civil Actions 22-P-24 and 22-P-26, styled *State of West Virginia v. Travis Beaver and Wendy Peters*.

12.1.3. "Prorated amount" or "prorated amount of Hope Scholarship funds" means the full amount of Hope Scholarship funds, less an amount prorated to account for the student's enrollment in a public school during the 2022-2023 academic year. The Board shall calculate the prorated amount of a disbursement by reducing the full amount by a percentage amount equal to the number of the county board of education's instructional days in the instructional term during which the student was enrolled full-time in public school in said county, divided by 180.

12.2. A student that applied for the Hope Scholarship Program prior to the issuance of the injunction will be eligible to participate in the Program during the 2022-2023 academic year if all the following criteria are met:

12.2.1. A court of competent jurisdiction stays, lifts, vacates, or overturns the injunction;

12.2.2. The student's application was approved or, at the time the student's application was submitted to the Board, the student was eligible to participate in the Program according to W. Va. Code §18-31-2(B) and this rule;

12.2.3. The student is a resident of this state;

12.2.4. The student is under the age of 21; and

12.2.5. The student has not completed a secondary school program.

12.3. The Board will disburse the full amount of Hope Scholarship funds to the Hope Scholarship account of a student meeting the criteria of section 12.2. of this rule, if:

12.3.1. The student is enrolled full-time in a non-public school, in compliance with W. Va. Code §18-8-1, and was enrolled in said school for the entire period during which the injunction was in place; or

12.3.2. The student is participating in an individualized instructional program in compliance with W. Va. Code §18-8-1 and was participating in said program for the entire period during which the injunction was in place.

12.4. The Board will disburse a prorated amount of Hope Scholarship funds to the Hope Scholarship account of a student meeting the criteria of section 12.2. of this rule, if the student was enrolled full time in public school for any period of time while the injunction was in place.

12.5. If a student meeting the criteria of section 12.2. of this rule made tuition payments to a participating school for the 2022-2023 school year using non-Hope Scholarship funds while the injunction was in place, the participating school may remit said tuition payments made with non-Hope Scholarship funds or any amount thereof to the student prior to or after receiving Hope Scholarship funds for said tuition payments.

12.5.1. A remittance of funds that is issued pursuant to this section and in compliance with all requirements of this rule and the Act is not an impermissible sharing of Hope Scholarship funds, as described in subdivision 11.3.1.b. of this rule, and does not constitute a refund, subject to the requirements of section 8.2. of this rule. The funds being returned to the parents in this situation are the non-Hope Scholarship funds.

12.5.2. As provided in section 11.7. of this rule, a participating school may not accept Hope Scholarship funds and make a remittance pursuant to this section for down payments, deposits, or advance tuition payments made while the injunction was in place if the student did not ultimately attend the participating school. An education service provider may only accept Hope Scholarship funds required to cover tuition and fees for educational services actually rendered to a student.

12.6. Notwithstanding section 8.1. of this rule, the Board may adopt procedures to categorically approve and authorize reimbursement of Hope Scholarship funds to students meeting the criteria of section 12.2. of this rule for the cost of qualifying expenses while the injunction was in place. The Board may authorize its Secretary to approve and authorize reimbursement of Hope Scholarship funds for the cost of qualifying expenses while the injunction was in place.

12.7. A student subject to this section must comply with all generally applicable requirements of the Hope Scholarship Act and this rule, including but not limited to, withdrawing from public school prior to receiving any disbursement of Hope Scholarship funds. Students who wish to remain in public school for the remainder of the 2022-23 school year shall elect to decline the Hope Scholarship for the school year and must re-apply for the Hope Scholarship to be eligible for future school years.

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12.8. Due to programming delays to the online portal as a result of the injunction, the Board may disburse the 2022-23 Hope Scholarship funds in one payment no later than January 15, 2023 if needed instead of splitting into two installments as outlined in section 7.3.

12.9. Due to delays caused by the injunction, the Board may open the renewal application window for the 2023-24 school year during February 2023 instead of in accordance with the regular annual renewal window outlined in subsection 4.2.2.