



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Higher Education Policy Commission

TITLE-SERIES: 133-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes

RULE NAME: Performance-Based Funding Formula

CITE STATUTORY AUTHORITY: 18B-1-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 2800

Section 18B-17-2(pp) Passed On 2/15/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2023

This rule shall terminate and have no further force or effect from the following date:

April 01, 2028

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

Yes

Cindy L Anderson -- 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 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 2
PERFORMANCE-BASED FUNDING FORMULA

§133-2-1. General.

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

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

1.3. Filing Date. – March 1, 2023.

1.4. Effective Date. – April 1, 2023.

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on April 1, 2028.

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

§133-2-2. Purpose.

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

§133-2-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1.4. Acknowledge the unique mission of each institution;

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

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

4.1.6.a. A Hold Harmless Provision; and

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

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

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

4.3. Funding Formula Advisory Committee

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

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

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

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

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

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

4.5. Funding Formula Elements.

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

4.5.1.a. Progression Outcomes.

4.5.1.b. Completion Outcomes.

4.5.1.b.1. Associate degree completers;

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

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

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

4.5.1.c. Workforce Outcomes

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

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

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

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

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

4.5.2. Mission Weighting

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

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

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

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

4.6. Data Collection Requirements

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

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

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

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

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

4.7. State Priority Degree Fields

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

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

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

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

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

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

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

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

§133-2-5. Formula Calculations

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

5.2. Benchmarking

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

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

5.3. Funding Formula Calculations

5.3.1. At the beginning of each annual budget cycle, the following values shall be calculated and

used in the determination of each institution's recommended base appropriation request:

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

5.3.1.a.1. Students representing Focus Populations;

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

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

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

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

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

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

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

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

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

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

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