



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

2/28/2024 11:00:56 AM

Office of West Virginia  
Secretary Of State

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

AGENCY: Community And Technical College Education TITLE-SERIES: 135-20  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Initial Authorization of Degree-Granting Institutions  
CITE STATUTORY AUTHORITY: §18B-4-7

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

Authorization is cited in (house or senate bill number) SB547

Section §18B-17-3(ii) Passed On 2/12/2024 12:00:00 AM

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

February 28, 2024

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

August 01, 2029

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

**Yes**

**Angela S Kerns -- 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 135  
LEGISLATIVE RULE

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 20  
INITIAL AUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS

**§135-20-1. General.**

1.1. Scope. -- This rule establishes the policy and procedure regarding the Council's approval of degree-granting institutions which offer degrees or other postsecondary credentials at or below the associate level.

1.2. Authority. -- West Virginia Code §18B-4-7

1.3. Filing Date. -- February 28, 2024

1.4. Effective Date. -- February 28, 2024

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

**§135-20-2. Purpose.**

2.1. The West Virginia Council for Community and Technical College Education is charged by the Legislature with authorizing independent non-profit and for-profit institutions and out-of-state institutions to provide postsecondary academic credit or to confer degrees in this State. Authorization is required for all postsecondary providers that offer degrees and postsecondary credentials at or below the associate degree level regardless of whether they use the term "academy," "college," "institution," "university" or similar verbiage in the name of the operation.

2.2. This rule provides institutions of higher education with guidelines and procedures for establishing operations and obtaining authorization to confer degrees in West Virginia. Compliance with the standards ensures that each institution operating in this State meets basic expectations for conferring postsecondary degrees or credentials or delivering instruction creditable toward such postsecondary degrees or credentials.

2.3. This rule is designed to prevent deception of the public resulting from the offering, conferring, or use of fraudulent or substandard degrees and to protect legitimate institutions and those holding degrees from them.

**§135-20-3. Definitions.**

3.1. "Academic credit" means the certification of a student's successful completion of a unit of a course of study leading to a formal award granted by an institution approved to offer a postsecondary credential or degree at or below the associate degree level.

3.2. "Accreditation" means a status attained by the institution through voluntarily meeting standards established by a nongovernmental entity recognized by the U.S. Department of Education to assess and evaluate the quality of the institution and its programs. In this rule, such entity is referred to as "accreditor."

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3.3. "Authorization" means the status granted by the Council that allows the institution to offer programs and courses within the State of West Virginia that lead to conferral of a degree, earned when the institution demonstrates compliance with the requirements of this rule.

3.4. "Chancellor" means the Chancellor for Community and Technical College Education as that term is defined by W. Va. Code § 18B-1-2 or his or her designee.

3.5. "Contact hours" or "clock hours" means the amount of time in actual hours students spend in class under the instruction of and in the physical presence of faculty or instructional staff or in an interactive distance learning course.

3.6. "Council" means the West Virginia Council for Community and Technical College Education as defined by W. Va. Code § 18B-2-1 and as created by W. Va. Code § 18B-2B-1, et seq.

3.7. "Course" means a formally organized, structured series of instructional activities open to the general public for which a fee is charged, and for which credit toward a degree either is awarded or may reasonably be understood to be applicable to a degree with the intent of imparting information or understanding at a level appropriate to a postsecondary audience. Instruction may be in face-to-face meetings or delivered electronically or by other means.

3.8. "Degree" means any designation, appellation, series of letters or words, or other symbol that signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level.

3.9. "Degree program" means a defined, integrated curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty.

3.10. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.

3.11. "Institution" means an educational facility maintained by any person, partnership, firm, public or private corporation, association, agency, institute, trust or other entity of any nature whatsoever operating as a school, academy, institute, private junior college, college, university, or entity of whatever kind that furnishes or offers to furnish instruction leading toward or prerequisite to a credential or degree beyond the secondary school level, but below the baccalaureate level, and that requires that, in order to obtain a degree, the recipient thereof satisfactorily complete a degree program. For purposes of this rule, this definition does not apply to any State institution of higher education, as that term is defined in W. Va. Code § 18B-1-2.

3.12. "Physical Presence" means an actual presence in this State, online or on-site, for the purpose of conducting operations as an institution, including enrollment, solicitation or advertising. Physical presence also includes, but is not limited to:

3.12.1. A physical site located within the State from which instruction originates or in which instruction is delivered;

3.12.2. Dissemination of an educational credential from a location within the State;

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

3.12.4. Advertising, promotional material, or public solicitation in any form specifically directed to West Virginia residents through distribution or advertising in the State;

3.12.5. Instructional delivery that receives assistance from any other organization within the State to facilitate or provide such delivery.

3.12.6. Clinical experiences, internships, or other similar curricular activity. This subsection does not apply to online instructors residing in West Virginia but having no direct, in-person contact with students, or individuals participating in college fairs coordinated by the Council, local school districts, or other providers of primary or secondary education.

3.13. "Preliminary status" means a six-month period of time that the Council grants to an institution to satisfactorily complete preliminary information as required by accreditor. During this time period, the institution may not accept students, offer instruction, award credits toward a degree, or award a degree until granted further authorization by the Council.

3.14. "Probationary status" means that the Council has authorized an institution to enroll students, offer instruction, graduate students, and award degrees or postsecondary credentials under the condition that the institution is continuously seeking and making satisfactory progress toward acquiring full accreditation and full State authorization.

3.15. "Reauthorization" is the process by which an institution annually renews its authorization by the Council. This process is governed by 135 C.S.R. 52, *Annual Reauthorization of Degree-Granting Institutions*.

3.16. "Religious, theological, or faith-based institution" means a postsecondary institution that offers no general degree programs and limits its course of instruction to religion, theology, or preparation for a religious vocation or is operated by a church or religious organization and limits its instruction to preparation for service to churches or other religious organizations.

3.17. "Unearned Tuition" means the portion of tuition paid for which the institution has not fulfilled its contractual agreement.

**§135-20-4. Authorization Required; Exceptions.**

4.1. No institution may advertise, solicit, recruit, enroll, or confer a degree or postsecondary credential or any object in evidence thereof in this State unless and until authorized by the Council to do so.

4.2. Religious, theological, or faith-based institutions are excepted from the requirement of Council authorization. However, any such institution that offers general degree programs shall seek authorization in accordance with this rule.

4.3. The following out-of-state institutions are excepted from the requirement of Council authorization:

4.3.1. Those offering courses through brokering a partnership or other collaborative arrangement with a State institution of higher education through which it provides support for the State institution's programmatic offerings;

4.3.2. Those offering a short course or seminar in which the instruction takes no more than 20 clock (contact) hours and is not for college credit; or

4.3.3. Those offering courses or programs on a military installation solely for military personnel or civilians employed on such installation.

4.4. Non-degree granting institutions whose programs are designed primarily for direct job entry or upgrading job skills and are described in clock (contact) hours are excepted from the requirement of Council authorization. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to achieve outcomes.

4.5. Each institution that claims to be excepted from authorization by this section shall provide to the Council any information requested by the Council to determine whether the exception applies. The Council shall receive the institution's written request for such determination at least 30 days prior to the date the institution proposes to begin offering a course of instruction. The Council shall notify the institution of its determination in writing.

#### **§135-20-5. Institutional Titles.**

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

5.2. No person, firm, association, institution, trust corporation or other entity shall use in any manner the term "college" or "university" or any abbreviation thereof, or any words or terms tending to designate it as, or create the impression that it is, an authorized institution, unless and until it obtains authorization as provided in this rule.

5.3. This section does not apply to any institution which used the term "college" or "university" prior to July 1, 2006.

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

#### **§135-20-6. Authorization to Operate.**

6.1. An institution locating in West Virginia must register with the Secretary of State's office prior to making any application to the Council for authorization.

6.2. All institutions not excepted per Section 4 and offering any degree or postsecondary credential at or below the associate degree level shall apply for and receive from the Council initial authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.

6.3. Applicants for initial authorization shall demonstrate compliance with the Council's standards for academic programs, which encompass institutional accreditation, mission and governance, institutional and program resources and facilities, academic policies, student support services, curriculum, faculty capacity, and credentialing and assessment as set forth in this rule.

6.4. Institutions seeking to exceed or change their approved programmatic mission shall receive approval from the Council to offer each program that exceeds the level of academic degrees that the institution is authorized to grant. Such institution shall submit documentation to the Council, signed and verified by the chief executive officer of the institution, that specifies the scope of the proposed change, including long-range plans for new degree programs and programs that exceed the level of academic degrees currently authorized for the institution. The Council shall evaluate requests to exceed an institution's programmatic mission based on the following criteria: objectives of proposed program; demonstration of need; effect of new program on existing programs at other institutions; resource

availability; qualified faculty and administrators; library holdings and support; facilities and equipment; and evidence of strength to offer the proposed program.

6.5. Proprietary schools seeking initial authorization shall post a surety bond in accordance with W. Va. Code § 18B-2B-9 and 135 C.S.R. 35, *Business, Occupational, and Trade Schools*.

6.6. Institutions with a physical presence in West Virginia shall meet all applicable health, safety, fire, and sanitation laws, including the Americans with Disabilities Act and provide documentation of such compliance to the Council upon request.

6.7. Institutions seeking West Virginia authorization may withdraw from the authorization process at any time upon written notification to the Chancellor.

#### **§135-20-7. Procedures for Applying for Initial Authorization.**

7.1. Newly established institutions in West Virginia and those seeking accreditation by an accreditor shall seek Council authorization to offer courses and/or academic programs within West Virginia by submitting an application on a form prescribed by the Council, signed and verified by the chief executive officer of the institution, and accompanied by an application fee of \$6,000, which fee the Council may adjust from time to time as it deems necessary. Following are the steps to be taken by the institution and the Council to initially authorize an institution:

7.1.1. The applying institution shall contact the Secretary of State's office to determine compliance with its requirements for starting or operating a business in West Virginia.

7.1.2. The applying institution shall attend a preliminary conference between the institution's chief executive officer or designee and the Chancellor. The agenda shall include a discussion of criteria the institution must meet and procedures it must follow to obtain authorization.

7.1.3. The applying institution shall submit a self-study report following the preliminary conference that includes all requested documents and materials related to initial authorization, including complete and accurate documentation demonstrating fulfillment of the essential conditions in Section 9 of this rule, including evidence of a critical and compelling regional or Statewide need or demand for the specific academic degree program(s) in West Virginia.

7.1.4. The applying institution shall facilitate and participate in the Chancellor's visit to the site(s) of the institution seeking state authorization and any follow-up meetings requested by the Chancellor. At the discretion of the Chancellor, the Chancellor may form a compliance review committee, which may participate in the Chancellor's site visit. The principal task of the compliance review committee is to verify that the institution meets the Council's standards for preliminary authorization and to report its findings to the Council. The compliance review committee may be composed of any or all of the following:

7.1.4.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Council standards for approval.

7.1.4.b. Members of the Council staff as directed by the Chancellor.

7.1.5. Following the site visit and review of submitted documentation, the Chancellor shall prepare an analysis of the findings and develop a recommendation for the Council regarding the institution's application.

7.1.6. The Chancellor shall provide to the applying institution a draft of the report prepared in accordance with this section for correction of factual errors and comment. The institution may

respond to the draft report within 10 working days of receiving it. The Chancellor shall include the institution's comments in the report presented to the Council.

7.1.7. Upon receipt and review of the Chancellor's recommendation, the Council may grant the institution Preliminary State Authorization effective for up to six months. Within that period of time the institution shall satisfactorily complete the preliminary process required by the accreditor. During this time, the institution may not accept students, offer instruction, award credits toward a degree, or award a degree until the Council grants full authorization. If the applying institution does not satisfactorily complete the preliminary accreditation process during its six-month Preliminary Authorization period, the Council may suspend or revoke its authorization.

7.1.8. If, at the time of applying for initial authorization, the institution is not fully accredited by an accreditor, the Chancellor shall request the institution to submit information verifying its accreditation status and/or evidence of "reasonable and timely progress" toward achieving accreditation. "Reasonable and timely progress" toward accreditation means a status with an accreditor, which status shall be documented, indicating that the accreditor has determined that the institution has the potential for accreditation and is actively pursuing accreditation within the timetable established by the accreditor: *Provided*, That the institution may submit an alternative timetable to the Council for approval.

7.1.9. Once the institution has been accepted for consideration for candidacy by the accreditor and has submitted documentation of the same to the Council, the Council may grant the institution Probationary Authorization status: *Provided*, That the institution has met all other criteria for initial authorization. The institution shall remain on Probationary Authorization status no longer than six years.

7.1.9.a. An institution holding Probationary Authorization status shall continuously pursue accreditation and shall comply with all accreditation requirements and procedures to achieve full accreditation. If the applying institution does not continuously pursue accreditation during its period of Probationary Authorization, the Council may suspend or revoke its authorization.

7.1.9.b. Each institution holding Probationary Authorization status shall submit an annual report to the Council along with a nonrefundable fee of \$500, which fee the Council may adjust from time to time as it deems necessary. The annual report shall be in a form prescribed by the Council, signed and verified by the chief executive officer of the institution, and include the following:

7.1.9.b.1. Any changes or additions to information previously submitted as part of the application for Preliminary Authorization;

7.1.9.b.2. A copy of or link to the institution's current catalog with major changes cited;

7.1.9.b.3. The institution's financial statement from the most recent fiscal year;

7.1.9.b.4. The institution's enrollment report from the most recent academic year;

7.1.9.b.5. A list of all institutional personnel including staff, instructors, administrators, and agents;

7.1.9.b.6. Summary data on student State and federal financial aid;

7.1.9.b.7. Data on student retention;

7.1.9.b.8. Program completion data, as applicable;

7.1.9.b.9. Status of progress toward receiving full accreditation the accreditor; and,

7.1.9.b.10. Any other information or clarification requested by the Chancellor for determination of authorization recommendation.

7.1.9.c. Following the accreditor's site visit and action granting the institution accreditation status, the institution shall immediately notify the Council, which may then authorize the institution as follows:

7.1.9.c.1. Full Authorization, as a result of the decision by the accreditor to accredit the institution and the institution having demonstrated compliance with the essential conditions for Authorization as set forth in Section 9 below.

7.1.9.c.2. Continued Probationary Authorization pending the institution's appeal of an accreditor's denial of accreditation. The Council may only grant Continued Probationary Authorization upon a showing of good cause by the institution in its annual report or other submission to the Council that it is continuing to pursue accreditation and that it continues to meet the criteria for initial authorization set forth in this rule.

7.1.9.c.3. Not Authorized as a result of denial of accreditation by the accreditor and the institution's loss of all available appeals of that denial or the institution's failure to meet the criteria for initial authorization set forth in this rule.

7.1.10. An institution that changes ownership while its application for initial authorization is pending shall immediately notify the Council of such change and update its application accordingly. Within six months of receiving written notification of such change of ownership, the Council shall reassess the institution's authorization status.

7.2. Accredited, institutions having their principal places of operation outside West Virginia and seeking to offer courses or degree programs at a physical location in West Virginia shall consult with the Secretary of State as required by Subsection 7.1.1. above. These out-of-state institutions shall also meet the following requirements:

7.2.1. The institution shall submit an application on a form prescribed by the Chancellor for each course or degree program to be offered at the site and an application fee not to exceed \$500. The application shall certify that:

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

7.2.1.b. The institution has been authorized to operate as necessary by the appropriate agency, if any, in the state where the main campus of the institution is located.

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

7.2.1.d. The out-of-state institution is authorized by its accreditor to offer degree programs outside the state where the main campus is located.

7.2.1.e. Any credit earned in West Virginia can be transferred to the institution's principal location outside West Virginia as part of an existing degree program offered by the institution.

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7.2.1.f. The institution offers the same program at the same level at its principal location outside West Virginia that it seeks to offer at a physical location in West Virginia.

7.2.1.g. The institution provides data that projects market demand and availability of openings in the job market to be served by the new program that the institution is seeking authorization to offer in West Virginia.

7.2.2. In making its determination, the Council shall consider whether the proposed degree programs or courses duplicate existing offerings of other institutions of higher education at the locations for which approval is requested.

7.2.3. The Council may authorize degree programs for a period of up to four years at a specified location: *Provided*, That the institution submits an application for renewal of the authorization with the Council at least 90 days prior to the initial authorization's expiration. The Council may authorize courses for a period of one year at a specified location: *Provided*, That the institution annually submits an application for renewal of the authorization with the Council at least 90 days prior to the initial authorization's expiration.

7.2.4. Accredited, out-of-state institutions authorized to deliver programs and/or courses in West Virginia for a specified period of time are not subject to the annual reauthorization provision of Section 14 of this rule.

7.2.5. The Council may waive or modify any or all of the reporting requirements established in this rule.

7.2.6. The Council shall notify in writing all institutions of its final decision on their applications for authorization. The Council shall assess such institutions an initial authorization fee not to exceed \$500.

7.3. Religious, theological or faith-based institutions. -- To qualify as a religious, theological, or faith-based college excepted from initial authorization by the Council, an institution shall submit an application for such exception on a form prescribed by the Chancellor, which shall be signed and verified by the chief executive officer of the institution. The application shall include documentation that the operation meets the definition of religious, theological or faith-based institution provided in Section 3 of this rule and that it meets each of the following criteria:

7.3.1. The operation is a non-profit institution owned, controlled, operated, and maintained by a bona fide church or religious denomination, lawfully operating as a non-profit religious corporation.

7.3.2. The operation limits its educational program to the principles of that church or denomination, and the diploma or degree is limited to evidence of completion of that education.

7.3.3. The operation grants degrees or diplomas only in areas of study that contain on their face, in the written description of the title of the degree or diploma being conferred, a reference to the theological or religious aspect of the degree's subject area.

7.3.4. The operation does not market, offer, or grant any general academic degrees or diplomas, but instead confers only degrees, diplomas, and other written evidence of proficiency or achievement that bear titles clearly signifying the religious, theological, or faith-based nature of the instruction offered by the institution.

7.3.5. The institution is exempt from ad valorem property taxation under State law.

7.3.6. The operation may submit additional evidence substantiating that it is religious, theological, or faith-based, including:

7.3.6.a. Documentation that the institution holds at least pre-accreditation status with an accreditor;

7.3.6.b. A statement of institutional mission clearly establishing the mission of the institution as solely religious, theological, or faith-based and curricula and degree, diploma, or certification programs that clearly support that mission singularly; and

7.3.6.c. Other documentary evidence of qualification for exception from the requirements of initial authorization as a religious, theological, or faith-based institution.

7.3.7. An institution is not excepted from the requirement of initial authorization as a religious, theological, or faith-based institution if it offers degrees appropriate for academic institutions, such as, but not limited to, Associate of Arts, Associate of Science, or other degrees typically offered by academic institutions, regardless of curriculum or course content, unless the degree title includes the religious field of study (e.g., “Associate of Arts in Religious Studies”). Institutions operating as religious, theological, or faith-based also may not offer degrees associated with specific professional fields or endeavors not clearly and directly related to religious studies or occupations.

7.3.8. A religious, theological, or faith-based institution shall prominently disclose on any of its transcripts, degrees and diplomas, honorary degrees, or other written evidence of proficiency or achievement, and include in any promotional materials or other literature intended for the public the statement: “This institution is not authorized by the West Virginia Council for Community and Technical College Education or the State of West Virginia.”

7.3.9. An institution operating as a religious, theological, or faith-based institution pursuant to this rule is not subject to annual reauthorization governed by 135 C.S.R. 52, *Annual Reauthorization of Degree-Granting Institutions*, so long as it continues to meet the criteria established herein: *Provided*, That if, at any time after the Council’s written determination that the institution is excepted from the requirement of initial authorization, the operation or mission of any religious, theological, or faith-based institution changes and it begins offering general academic degree programs or courses of study, such institution shall notify the Council immediately and submit an application for initial authorization in accordance with Subsection 7.1. or 7.2. of this rule.

#### **§135-20-8. Authorization Procedures for Out-of-State Institutions with Physical Presence in West Virginia.**

8.1. An out-of-state institution with physical presence in West Virginia, as defined in Section 3, but no physical location within the State shall apply to the Council for initial authorization by submitting a written application on a form prescribed by the Chancellor that is signed and verified by the chief executive officer of the institution and includes the following:

8.1.1. Documentation that the institution has established a “physical presence” in West Virginia, as that term is defined in Section 3 of this rule;

8.1.2. Documentation of accreditation by an accreditor;

8.1.3. An initial application fee of \$500, which the Council may adjust or waive as it deems appropriate;

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8.1.4. Documentation that the institution is authorized to operate by the appropriate agency in its home state; and

8.1.5. Any additional information required by the Chancellor to determine whether to grant the institution's application for initial authorization.

8.2. The Council may authorize an institution with a physical presence, but not a physical location, in West Virginia for up to four years: *Provided*, That the institution submits an application for renewal of the authorization to the Council at least 90 days prior to the expiration of the initial authorization.

8.3. Institutions authorized under this section are not subject to the reauthorization process established in 135 C.S.R. 52, *Reauthorization of Degree-Granting Institutions*.

### **§135-20-9. Criteria for Authorization Essential Conditions.**

9.1. Essential Conditions. -- An institution seeking initial authorization shall meet the following essential conditions.

9.1.1. The institution shall provide evidence that it is familiar with and understands its accreditor's accreditation procedures and State authorization rules and procedures. The statement shall indicate perceived strengths and weaknesses with respect to accreditation criteria and assess the institution's ability to achieve accreditation status. It shall state the name of the accreditor from which the institution is seeking accreditation. If the institution has secured full accreditation, it shall submit a copy of the final accreditation report to the Council.

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

9.1.3. Institutional organization, administration, and delivery sites.

9.1.3.a. The institution shall have an established governing board that possesses and exercises necessary legal power to enact and review basic policies that govern the institution. The board shall include among its members people who represent the public interest and are sufficiently autonomous from the administration and ownership to assure the integrity of the institution. The institution shall submit a list of the members of the board with a brief resume of each.

9.1.3.b. Documentation that the governing board has designated a chief executive officer to provide administrative leadership for the institution, including the chief executive officer's name, title, current vita, and the physical and mailing address of the administrative office, if different.

9.1.3.c. If faculty members are employed at the time of application, the institution shall submit their names, their academic credentials (degrees, previous experience, etc.), and their teaching fields. If no faculty members have been employed, the institution shall describe the qualifications of the faculty it is recruiting and the procedures it is using to find and contract with faculty members.

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9.1.3.d. The institution shall provide a description of the method of program delivery and/or the physical location of course delivery. If a program is designed for online delivery, it shall meet best practice guidelines for distance education delivery as outlined by the accreditor. If the program is designed for traditional classroom delivery, the institution shall identify the proposed physical location.

9.1.3.e. To assure that instructional delivery sites meet applicable State standards for health and safety, institutions shall secure a certificate of occupancy and recent fire inspection report from the State Fire Marshal's office for each instructional delivery site. If delivery is in a public building that already has regular health, safety, and fire inspections, the institution may instead submit a copy of the building's last approved inspection report. If the nature of the building changes, the institution shall submit updated inspection reports.

9.1.3.f. Instructional delivery sites shall comply with the Americans with Disabilities Act.

9.1.4. Degrees and academic programs. – The institution shall provide:

9.1.4.a. A list of the degrees it proposes to award;

9.1.4.b. A description of how the planned educational programs are compatible with the proposed institutional mission;

9.1.4.c. A description of how the fields of study upon which the academic programs are to be based are recognized as appropriate for a postsecondary institution and appropriately named. This may be demonstrated by the existence of professional literature in the field; the offering of similar programs in already-accredited institutions, generally; and by the existence of professional organizations related to the field;

9.1.4.d. Documentation that the content and length of the proposed academic program follows practices common to institutions of higher education. The maximum program length is 60 semester credit hours for associate degrees, unless institutional or program accreditation requires otherwise;

9.1.4.d.1. Certification that the institution shall award academic credit upon the student's completion of each unit of the course of study and grant a formal postsecondary credential upon the student's successful completion of the academic program;

9.1.4.d.2. A list of requirements for each degree program, including representative course syllabi specifying goals and requirements, course content, methods of evaluation, and bibliography;

9.1.4.d.3. Documentation that the student-teacher ratio is reasonable at all times in keeping with generally accepted teaching modes for the subject matter and that the institution will employ at least one full-time faculty for each degree program.

9.1.4.e. Documentation that any proposed associate degree program includes a coherent general education component that is consistent with the institution's mission and appropriate to its educational programs. General education is defined as follows:

9.1.4.e.1. General education curriculum may not be directly related to a student's formal technical, vocational, or professional preparation; it is a component of every student's course of study, regardless of the area of emphasis the student is pursuing; and it is intended to impart common knowledge, intellectual concepts, and a diverse range of perspectives that every educated person should possess.

9.1.4.e.2. The minimum requirement for general education for all undergraduate programs delivered through the traditional distributed curricula is 15 semester credits for technical and applied

associate degrees and 24 for academic associate degrees. If the general education component is delivered through integrated, embedded, interdisciplinary, or other accepted models, institutions shall demonstrate that the program meets minimum requirements equivalent to the distributed model.

9.1.4.f. A description of the learning resources and support services that the institution will provide to students on a regular, dependable basis, including access to library and online resources; laboratories; and academic advising, financial aid counseling, and support for special, targeted constituencies;

9.1.4.g. Documentation demonstrating that academic standards for all programs or courses offered electronically or by other distance learning methods are the same as those for other courses delivered at the institution and that any programs offered primarily through asynchronous or synchronous technology meet the standards of good practice for distance education delivery as prescribed by the accreditor.

9.1.5. Admission policies. -- Documentation that the institution's admission policies are consistent with its mission and appropriate to the educational program, including a copy of the institution's admission policies (which shall require at least a high school diploma for equivalent for associate degree programs), tuition and fees, and refund policies. The policies shall define the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs. These policies and related publications shall provide a true and accurate representation of the institution and its programs when recruiting students;

9.1.6. Financial resources. -- Documentary evidence that the institution has financial resources adequate to support start-up activities and sources of funds sufficient to ensure that the institution can sustain operations once students are admitted, including:

9.1.6.a. A current financial statement compiled or audited by an independent certified public accountant or a copy of the most recent income tax return if the financial statement is unaudited or internally generated;

9.1.6.b. A budget listing all sources of income and all Educational and General (E&G) expenditures and specifying the dollar amounts and percentages for each component of the budget for the preceding three fiscal years (including the current year) and a projection of expenditures and revenues for the upcoming year.

9.1.6.c. Documentation that the institution has the financial resources and planning sufficient to realize its mission over an extended period of time including financial resources sufficient to meet the following: facility maintenance and overhead; staff and faculty payroll; books, supplies, and/or equipment utilized by students; and general operating costs, including printing and advertising.

9.1.7. Faculty credentials. -- A description of how the institution will ensure that each full-time, part-time or adjunct instructional faculty member holds appropriate academic credentials in the program area or discipline in which the faculty member teaches. Each instructional faculty member shall meet qualifications as required by the accreditor;

9.1.8. Evaluation and assessment. -- Documentation explaining the clearly defined process by which the institution establishes, reviews, and evaluates its curriculum as well as how it will provide for appropriate and regular evaluation of its program and course effectiveness, including assessment of student learning, retention, graduation rates and student, graduate, faculty, and employer satisfaction.

9.1.9. Tuition policies. -- A copy of the institution's tuition policy, which shall provide at a minimum:

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9.1.9.a. That the total tuition for any specific program is the same for all persons enrolled at the same time;

9.1.9.b. That tuition charges for programs are objectively justifiable, effective on specific dates, and applicable to all who enroll thereafter;

9.1.9.c. That additional charges and costs are provided to prospective students before they are enrolled;

9.1.9.d. That true and accurate costs of courses and program completion are published and made readily available to all prospective and current students; and

9.1.9.e. That the institution has a tuition and fee refund policy that is available to all students. If the institution is Title IV eligible, the refund policy shall comply with the federal regulations governing institutional refunds.

9.1.10. Financial Aid. -- A copy of the policy that provides prospective students and applicants with basic opportunities for student financial aid. This information includes, but is not limited to: (1) types of federal, State, local, private, and institutional aid the institution offers; (2) description of the financial aid application process and the method the institution uses to determine student eligibility for aid; (3) methods and schedules the institution uses to determine and disburse financial aid to students; and (4) statement of the rights and responsibilities of financial aid recipients, including an explanation of student responsibility for repayment of loans and other financial aid and the consequences of non-payment and delinquent or default repayment of loans .

9.1.11. Library Resources. -- A description of how the institution maintains or ensures that students have reasonable and reliable access to a library with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the mission and enrollment of the institution; including clear and concise methods for on-campus and/or remote access of library electronic media resources.

9.1.12. Institutional and student records.

9.1.12.a. A detailed explanation of how the institution maintains accurate records of all enrolled students. The institution shall maintain, at a minimum, the following student records:

9.1.12.a.1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the institution's admission standards. Each student record shall reflect the requirements and justification for admission of the student to the institution. The institution shall retain admission records for five years;

9.1.12.a.2. Transcript of the student's academic work at the institution and student financial aid records, which the institution shall retain permanently in either hard copy or in a database with backup;

9.1.12.a.3. A non-transcript record of student progress at the institution including, but not limited to, course evaluations, grade change documents, and advisor records, which the institution shall retain for five years after the student leaves the institution.

9.1.12.b. The institution shall retain its financial records and produce them to the Chancellor for inspection upon request in accordance with Section 10.2. of this rule.

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9.1.12.c. Institutions administering financial aid programs shall maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the financial aid recipient.

9.1.12.d. The institution shall have a policy concerning retention, disposal, and release of student records that is compliant with the Family Educational Rights and Privacy Act (FERPA).

9.1.12.e. The institution shall have a written plan for the retention, custody, and retrieval of student records, including but not limited to academic transcripts, financial aid documents, international student forms, and tax information, in the event of closure of the institution or discontinuance of service. The plan shall include a method by which students and alumni of the institution will be able to retrieve such records upon request in accordance with Section 12 of this rule.

9.1.13. Catalog and official publications. -- A copy of or link to the institution's official catalog, which shall conform to the standards established by the institution's accreditor, and certification by the institution's chief executive officer that the institution's official publications are and will be true and accurate and otherwise comply with applicable consumer protection laws;

9.1.14. Student grievances. -- A copy of the institution's student grievance policy addressing the receipt, investigation, and resolution of student complaints. The policy shall include, at a minimum:

9.1.14.a. An appropriate time frame for investigating and resolving the complaint;

9.1.14.b. A requirement that those persons charged with resolving the complaint are fair and impartial and authorized to resolve the complaint;

9.1.14.c. Procedures to ensure that a student will not be subject to unfair actions as a result of submitting a complaint or participating in an investigation of a student complaint; and

9.1.14.d. A requirement that the institution retain the records related to student complaints, including the disposition of the matter and other pertinent information for at least five years; and

9.1.15. Any additional information or data deemed necessary by the Chancellor to determine whether an institution meets the essential conditions to receive initial authorization.

### **§135-20-10. Termination, Revocation, Suspension, or Withdrawal of Initial Authorization.**

10.1. The Council may, for good cause shown, suspend, withdraw, revoke, or terminate the initial authorization of an institution to confer degrees or otherwise operate in this State. The Council also may place an institution on probation, order refunds to students, forfeit a proprietary school's surety bond in accordance with 135 C.S.R. 35, *Business, Occupational, and Trade Schools*, or take any other appropriate action against an institution violating the provisions of this rule. "Good cause" to take adverse action against an institution's initial authorization status includes, but is not limited to, the following:

10.1.1. Failure to provide the Council with a copy of any notice of warning, suspension, revocation or other adverse action received from any accreditor within five days of receipt of such notice;

10.1.2. The institution is no longer making reasonable and timely progress toward accreditation while assigned Preliminary or Probationary Authorization status;

10.1.3. Loss of accreditation by an accreditor;

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10.1.4. Cancellation of a proprietary school's bond by the bonding company and the proprietary school's failure to secure a replacement in accordance with this rule and 135 C.S.R. 35, *Business, Occupational, and Trade Schools*;

10.1.5. Providing false, misleading, or incomplete information to the Council;

10.1.6. Presenting information or documents about the institution that is false, fraudulent, misleading, deceptive, or inaccurate in a material respect;

10.1.7. Refusal to allow reasonable inspection by or to supply requested information to the Council;

10.1.8. Repeatedly engaging in conduct prohibited by this rule and failure to take corrective action directed by the Council within the required time;

10.1.9. Closing the institution without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition, or otherwise failing to discharge the institution's contractual or quasi-contractual obligations to the students;

10.1.10. Conviction of the owner of an institution of a felony or crime involving administration of the institution or State or Federal student financial aid programs;

10.1.11. Repeated and/or consistent violations of the guidelines found in this rule, particularly in areas such as advertising, fair consumer practices, or operational standards;

10.1.12. Exclusion from eligibility to participate in State or Federal student financial aid programs based on any of the following:

10.1.12.a. The institution does not have a signed participation agreement in place; or,

10.1.12.b. The institution has been deemed ineligible to participate in Federal student financial aid programs by the United States Department of Education; or

10.1.12.c. The Council has determined, based upon audits and/or administrative site visits, that the institution has mismanaged State financial aid funds or lacks adequate institutional controls to manage such funds properly.

10.1.13. Failure to submit a complete or satisfactory annual report in accordance with Section 7 of this rule.

10.2. The Chancellor may make all necessary audits or surveys of or site visits to all institutions that have been initially authorized by the Council, whether the institution's initial authorization status is Preliminary, Probationary or Full, to ensure the institution's compliance with this rule. The Chancellor may also investigate consumer complaints that an initially authorized institution is, may be, or has been violating this rule. The Chancellor shall note and describe all violations of this rule and report the same to the Council in writing, contemporaneously furnishing a copy to the institution concerned.

10.2.1. Within 10 business days of receiving the Chancellor's report, the institution may schedule a meeting with the Chancellor to discuss the contents of the report and any remedial action the institution plans to take to address the issues outlined therein. If the institution does not request a meeting within the prescribed timeframe, the Chancellor shall furnish the report to the Council, along with a recommendation for what action described in Section 10.1., if any, the Council should take regarding the institution's initial authorization status.

10.2.2. If the institution requests the meeting within the appropriate timeframe, the Chancellor may amend the report based on additional information or documentation provided by the institution that was not provided or available to the Chancellor during the audit, survey, site visit, or investigation described in Section 10.2. Within five business days of the meeting, the Chancellor shall furnish the original or amended report to the Council in accordance with Subsection 10.2.1.

10.2.3. The Council's decision to terminate, withdraw, suspend, or revoke an institution's initial authorization or to take any other action specified in Section 10.1. above, shall be made in a meeting of the Council subject to the *West Virginia Open Governmental Proceedings Act*, W. Va. Code § 6-9A-1, et seq.

10.3. Within five business days of the Council's decision, the Chancellor shall issue and furnish to the institution a written decision on the action taken, including the specific reasons therefore.

10.4. An institution adversely affected by a decision of the Council pursuant to this Section may file an appeal in accordance with the provisions of Section 11 below within 10 business days after receipt of the written decision. The filing of an appeal does not suspend the effect of the Council's decision.

### **§135-20-11. Appeals.**

11.1. An institution adversely affected by an order made and entered by the Council in accordance with Section 10 of this rule or aggrieved by a decision denying an application for initial authorization as set forth in Sections 7 and 8 of this rule may appeal such order or decision in accordance herewith: *Provided*, That the institution shall submit its written appeal to the Chancellor within 10 business days of receiving the decision giving rise to the complaint.

11.2. The Chancellor shall conduct the hearing in accordance with the West Virginia Administrative Procedures Act, W. Va. Code § 29A-5-1, et seq.

11.3. The Council shall establish a procedural rule in accordance with W. Va. Code § 29A-3A-1, et seq. for the regulation and conduct of all proceedings in appeal before it.

11.4. The Chancellor may retain, on an as-needed basis, individuals to serve as hearing examiners, court reporters, or other such personnel to assist the Council with hearing and administering such appeals.

11.5. Nothing in this rule in any way affects or limits the due process protections or other protections afforded to proprietary schools pursuant to either W. Va. Code § 18B-2B-9 or 135 C.S.R. 35, *Business, Occupational, and Trade Schools*.

### **§135-20-12. Notification and Deposit of Records Upon Discontinuance of a Program or Institution.**

12.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this State, its chief executive officer shall notify the Council of the date of discontinuance and the name, telephone number, physical address, and email address of the entity where records will be maintained.

12.2. Institutions shall permanently maintain their records so that authorized parties may obtain copies thereof. Such records shall include, but not be limited to, information pertaining to the admission of each student and former student and the educational record of each student and former student, as well as financial aid records of each student and former student consistent with State and federal law.

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12.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Council of the following:

12.3.1. The planned date of termination of postsecondary education operations;

12.3.2. The planned date for the transfer of student records;

12.3.3. The name and address of the organization to receive and hold the student records, if different from the institution itself; and

12.3.4. The designated records custodian at the organization receiving the student records who will provide official copies of records or transcripts upon request.

12.4. Any institution that fails to comply with the requirements of this Section forfeits consideration by the Council of any future application for authorization or reauthorization to operate in this State.

### **§135-20-13. Advertisements, Announcements and Other Promotional Materials.**

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

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

13.1.2. An institution shall use its name as shown in its letter of approval from the Council, together with a complete physical and mailing address, if different, for all advertising and promotional purposes within the State.

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

13.1.4. Reference in advertising to accreditation shall name the accreditor and shall be limited to accreditation currently held by the institution through the accreditor.

13.1.5. No advertisement, announcement or any other material produced by or on behalf of an institution shall in any way indicate that the institution is supervised, recommended, endorsed or accredited by the Council or the State of West Virginia; neither shall it include the name of the Council except to say that the Council has authorized the institution to operate in the State.

### **§135-20-14. Penalties; Injunctive Relief.**

14.1. Any person, firm, corporation, partnership, association, degree-granting institution, or other entity making any false statement in any application or documentation submitted to the Council pursuant to this rule is guilty of perjury pursuant to W. Va. Code § 39-1-10a, and the Council may refer the matter to the prosecuting attorney of the county in which the institution operates.

14.2. The Council may seek an injunction against any institution and its officers and directors, as appropriate, in violation of any provision of this rule or condition of its authorization to compel compliance

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with and enjoin violations of this rule or conditions of authorization. The venue of any such action shall be the county in which the violation or noncompliance exists or is taking place. The circuit court may issue a temporary or preliminary injunction pending a decision on the merits of the petition for injunctive relief.

14.2.1. In seeking an injunction, it is not necessary for the Council to post a bond or to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate.

14.2.2. The Council may file a petition for injunctive relief and the circuit court may grant the relief requested notwithstanding the fact that the Council did not exhaust or invoke against the institution all available administrative remedies, if any.