



**WEST VIRGINIA SECRETARY OF STATE**

**KRIS WARNER**

**ADMINISTRATIVE LAW DIVISION**

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2/12/2025 3:55 PM

Office of West Virginia  
Secretary Of State

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**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL  
RULE**

AGENCY: Education TITLE-SERIES: 126-205  
RULE TYPE: Legislative Exempt Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: CHARTER PUBLIC SCHOOLS STIMULUS FUND  
(8400)  
CITE STATUTORY AUTHORITY: W. Va. Constitution, Article XII, §2; and W. Va. Code §§18 2-5, 18-5G-4(b)  
(5), §18-5G-17(b).

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

March 20, 2025

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

**Yes**

**Kelli D Talbott -- 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.**



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TITLE 126  
LEGISLATIVE EXEMPT RULE  
BOARD OF EDUCATION

SERIES 205  
CHARTER PUBLIC SCHOOLS STIMULUS FUND (8400)

**§126-205-1. General.**

1.1. Scope. -- This rule establishes the process by which applicants may request financial support from the Charter Public Schools Stimulus Fund (CPSSF) created by West Virginia Code §18-5G-17(a), and establishes the standards applicable to the use of monies granted from such Fund.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-5G-4(b)(5), §18-5G-17(b).

1.3. Filing Date. -- February 12, 2025

1.4. Effective Date. -- March 20, 2025

**§126-205-2. Definitions.**

2.1. Applicant. One or more persons or a West Virginia institution of higher education that intends to apply, or has applied, and been approved by an authorizer to operate a charter public school in this State, and has applied for financial support from the CPSSF.

2.2. Authorizer. An entity given the authority under W. Va. Code §§18-5G-1 *et seq.* to decide whether to approve or reject applications to operate charter public schools in this State.

2.3. Charter Public School. A public school, or program within a public school, authorized in accordance with W. Va. Code §§18-5G-1 *et seq.* and subject to the general supervision of the West Virginia Board of Education (WVBE).

2.4. Charter Public Schools Stimulus Fund (CPSSF). The special revenue fund established by W. Va. Code §18-5G-17(a) for the purpose of providing financial support to charter public school applicants and charter public schools that may not otherwise have the resources for start-up costs.

2.5. Grantee. One or more persons or a West Virginia institution of higher education that have been awarded Charter Public Schools Stimulus Fund monies by the Professional Charter School Board.

2.6. Professional Charter School Board (PCSB). The statutory body created by W. Va. Code §18-5G-15 which reports directly to, and is responsible to, the WVBE and subject to the general supervision of the WVBE pursuant to Article XII, §2 of the W. Va. Constitution.

2.7. West Virginia Board of Education (WVBE). The constitutional body established by the people of the State of West Virginia in Article XII, §2 of the W. Va. Constitution and vested by the people with the general supervision of the public schools of this State.

**§126-205-3. Eligibility.**

3.1. To be eligible for financial support from the CPSSF, applicants shall demonstrate that without the financial support from the CPSSF:

3.1.a. they cannot successfully apply to an authorizer; or,

3.1.b. they do not have the financial capacity for start-up costs associated with establishing a charter public school in the State.

3.2. To establish eligibility under section 3.1.a of this rule, the applicant shall:

3.2.a. demonstrate that it cannot meet specifically identified charter public school criteria and/or charter public school application requirements set forth in West Virginia Code §18-5G-3 and/or West Virginia Code §18-5G-8; as a result of its lack of financial capacity;

3.2.b. produce financial reports and/or other documents that supports that the applicant lacks the financial capacity to meet the specifically identified charter public school criteria and/or charter public school application requirements set forth in W. Va. Code §18-5G-3 and/or W. Va. Code §18-5G-8;

3.2.c. demonstrate that its inability to meet those specifically identified criteria and/or requirements will be remedied by an initial grant from the CPSSF; and,

3.2.d. demonstrate that it is not working with, or financed by, any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization's purpose.

3.3. To establish eligibility under section 3.1.b of this rule, the applicant shall:

3.3.a. demonstrate that it does not have the financial capacity for specifically identified start-up costs that are allowable CPSSF costs under this rule;

3.3.b. produce financial reports and/or other documents that supports that the applicant lacks the financial capacity for specifically identified start-up costs that are allowable CPSSF costs under this rule;

3.3.c. demonstrate that its lack of financial capacity for the specifically identified start-up costs will be remedied by an initial grant from the CPSSF;

3.3.d. demonstrate that it is not working with, or financed by, any organization that has started or financed other charter schools to the degree that facilitating and starting charter schools is a significant portion of the organization's purpose; and,

3.3.e. demonstrate that it is seeking CPSSF funding during or before the first two years of the charter school's operation as required by W. Va. Code §18-56-17(c)(1).

3.4. In order to meet the eligibility criteria set forth in sections 3.2.d and 3.3.d of this rule, the applicant shall:

3.4.a. demonstrate that the charter held or sought to be held by the applicant is held or sought to be held by the school and not by a for-profit organization or a nonprofit subsidiary of a for-profit organization engaged in starting, facilitating, managing and/or financing charter schools as a significant portion of the organization's purpose or business.

3.4.b. provide an assurance that it has not and will not enter into a contract or contracts with a for-profit organization or a nonprofit subsidiary of a for-profit organization engaged in starting, facilitating, managing and/or financing charter schools as a significant portion of the organization's purpose or business.

**§126-205-4. Allowable and Non-Allowable Costs.**

4.1. Grant funds from the CPSSF must supplement, not supplant, any federal, state, local or other funds available to the applicant for the items for which the applicant seeks CPSSF funding. To meet its burden of showing that the CPSSF funds sought by the applicant will not be used to supplant any available federal, state, local, or other funds, the applicant must show that such other available funds are necessary to meet expenses other than the expenses at issue in the CPSSF application.

4.2. Recipients of CPSSF funding shall only use such funding in accordance with their CPSSF budget that is prepared and approved in accordance with this rule.

4.3. CPSSF funding shall only be expended for costs that are one-time in nature to allow the applicant to successfully apply to an authorizer or pay for start-up costs associated with establishing a charter public school. CPSSF funding shall not be expended for ongoing operational costs. Questions to be considered when making the distinction between one-time and ongoing costs are whether the expense is required to operate the school and whether the school will continue to incur the expense after the CPSSF grant has expired. If either of these questions are answered in the affirmative, then the expense is not likely to be a one-time expense and therefore, would not be allowed.

4.4. CPSSF funding shall not be used for real estate acquisitions.

4.5. CPSSF funding shall not be used to make permanently affixed improvements, alterations, or additions to a physical facility that the applicant does not own. Provided that, if a charter public school eligible for CPSSF funding is leasing a public facility from a county board of education or other public entity pursuant to West Virginia Code § 18-5G-12, it may seek to use CPSSF funding to make permanently affixed improvements, alterations, or additions to the facility with the approval of the county board or other public entity that owns the public facility. If the PCSB distributes any CPSSF funding for the purpose of making removable improvements to a facility that is not owned by the applicant, the improvements shall be accomplished in such a manner that they may be removed with minimal effort.

4.6. If the PCSB distributes CPSSF funding for the purpose of making permanently affixed improvements, alterations, or additions to a physical facility owned by the applicant, a lien in favor of the West Virginia Board of Education shall attach to the physical facility and the real property on which the physical facility is situated. The lien shall be in the amount of the CPSSF funding distributed by the PCSB and shall continue for a period of fifteen (15) years from the date of completion of the improvements, alterations, or additions to the physical facility. To protect and enforce the lien, the following requirements shall apply during the period of the lien:

4.6.a. For lien amounts greater than twenty-five thousand dollars (\$25,000.00), upon the applicant's own initiative, and at its own expense, the applicant shall record a notice of lien in the office of the county commission of the county in which the real property is situated. The notice of lien shall state the amount and expiration date of the lien, identify the West Virginia Board of Education as holder of the lien, state the West Virginia Board of Education's contact information, and contain a description of the real property subject to the lien.

4.6.b. The applicant must maintain appropriate insurance coverage on the physical facility.

4.6.c. If the physical facility is no longer needed for the original purpose, including but not limited to temporary or permanent cessation of operation of the public charter school, or failure to begin operation of a public charter school, the applicant shall compensate the PCSB in the full amount of the lien.

4.6.d. Before the physical facility or the real property on which the physical facility is situated may be disposed of or otherwise transferred, the applicant shall compensate the PCSB in the full amount of the lien.

4.7. Costs must be incurred during the time period specified in the CPSSF grant award in order to be an allowable cost.

4.8. Non-Allowable costs for CPSSF funding include, but are not limited to:

- 4.8.a. After school programs;
- 4.8.b. Audits;
- 4.8.c. Authorizer Fees;
- 4.8.d. Alcohol;
- 4.8.e. Consumable goods such as office supplies;
- 4.8.f. Conference travel;
- 4.8.g. Contingency or "petty cash" funds;
- 4.8.h. Contributions and donations to others; and,
- 4.8.i. On-going equipment and supplies for building maintenance.

**§126-205-5. Applications for Grant Funds.**

5.1. When the West Virginia Legislature appropriates funds to the special revenue account designated and known as the Charter Schools Stimulus Fund or other allowable sources of funds are deposited in such account, the PCSB may accept applications for CPSSF grant awards. Applications for funds may not be

accepted in the absence of a legislative appropriation and/or the deposit of other allowable sources of funds in the Charter Schools Stimulus Fund special revenue account.

5.2. Every applicant for CPSSF funds shall complete a written application in which the applicant:

5.2.a. attests that upon the date of application, it meets all applicable eligibility criteria set forth in section 3 of this rule and produces in connection with its application all reports and/or other documents required by section 3 of this rule;

5.2.b. identifies and describes the items for which the applicant seeks CPSSF funding;

5.2.c. demonstrates that other available federal, state, local, or other funds available to the applicant for the items for which the applicant seeks CPSSF funding are necessary to meet expenses other than the expenses at issue in the CPSSF application;

5.2.d. specifies the time period in which it will complete the purchase and/or acquisition of the items for which it seeks CPSSF funding; and,

5.2.e. provides a vendor quotation of the cost of the items for which it seeks CPSSF funding and provides a detailed budget for the purchase and/or acquisition of the items.

5.3. If an applications seeks CPSSF funding for the purpose of new construction or permanently affixed improvements, alterations, or additions, the application must include the following documentation:

5.3.a. a project development schedule including specific timelines and/or progression dates relative to the award date if the application is granted;

5.3.b. a site feasibility study including geotechnical evaluation, boundary and topographical data, geological evaluation, archaeological evaluation, site access planning, and utility availability; and

5.3.c. the credentials of all architectural and/or engineering contractors being considered to perform services if the application is granted.

5.4. The PCSB may, in its discretion, allow an applicant to amend its budget submitted in accordance with section 5.2.e. of this rule provided that the amendment does not materially change the purpose for which the CPSSF funding is sought and provided that the amendment is made before the PCSB and/or a PCSB subcommittee begins evaluation of applications.

5.5. Every application for CPSSF funding shall be signed by the applicant and/or a duly authorized representative of the applicant. If the signatory is a duly authorized representative of the applicant, the signatory shall identify his or her position in relation to the applicant.

5.6. Every application for CPSSF funding shall contain an attestation clause that states that the applicant affirms that the information contained in the application, and any documents submitted in connection with the application, are true and accurate. Further, the application shall be signed and affirmed before a notary public.

**§126-205-6. Determination of Grant Awards.**

6.1. The PCSB may appoint a subcommittee to evaluate and make recommendations on all eligible applications for CPSSF funding. Such appointments shall be made in a public meeting held in compliance with the West Virginia Open Governmental Proceedings Act, W. Va. Code §§6-9A-1 *et seq.*

6.2. All subcommittee deliberations, discussions, and determinations regarding recommendations shall be conducted in a public meeting in compliance with the West Virginia Open Governmental Proceedings Act, W. Va. Code §§6-9A-1 *et seq.*

6.3. Any appointed subcommittee shall evaluate and rank the eligible applications for awarding CPSSF funding using a scoring system that includes identified evaluative criteria and a scoring strategy.

6.4. Any appointed subcommittee shall make a recommendation to the PCSB on the disposition of eligible applications. Any such recommendation shall be in writing and include an explanation of the subcommittee's evaluation and ranking of the eligible applications.

6.5. The PCSB will consider all eligible applications, taking into account the recommendations of any appointed subcommittee, to determine whether such applications should be granted, denied, or granted in part. In making such determinations, the PCSB will conduct all due diligence and use its subject-matter expertise to exercise reasonable discretion in providing for the most appropriate use of public funds.

6.6. The PCSB shall ensure that any appointed subcommittee member, PCSB member and/or PCSB staff member (member) involved in the determination of CPSSF evaluation and/or grant award does not have a conflict of interest that would call into question the fairness and impartiality of the grant award process. Conflicts of interest may include, but are not limited to, a personal interest that may impact a member's ability to fulfill his or her professional obligations in making a fair and impartial decision on a grant application. At all times, a member who participates in the grant application and award process shall avoid even the appearance of impropriety or of a conflict of interest.

6.7. When considering a recommendation made by an appointed subcommittee and/or acting upon an application for CPSSF grant funds, the PCSB shall deliberate and vote in a public meeting in compliance with the West Virginia Open Governmental Proceedings Act, W. Va. Code §§6-9A-1 *et seq.*

6.8. Pursuant to the requirements of section 8 of West Virginia State Auditor rule W. Va. 155CSR9, Accountability Requirements for State Funds and Grants (W. Va. 155CSR9), before awarding a CPSSF grant, the PCSB shall verify that the applicant seeking the grant is not barred from receiving the grant. The verification process shall include one of the following:

6.8.a. A clause within the formal grant agreement or other contractual document, signed by an authorized representative of the applicant seeking the grant before a notary public, stating as follows: "Under penalty of law for false swearing (W. Va. Code §61-5-3), [Applicant] certifies that by signing this grant agreement on the signature page that [Applicant] and all related parties have filed all reports for state grants received as required by W. Va. Code §12-4-14."; or,

6.8.b. A separate notarized sworn statement of compliance from the applicant seeking the grant stating that the applicant has filed all reports and sworn statements of expenditures pursuant to the requirements of W. Va. Code §12-4-14. An authorized representative of the applicant shall sign the

notarized statement and provide his or her printed name, title, and date of signature. The sworn statement shall include the following clause: "Under penalty of law for false swearing (W. Va. Code §61-5-3), [Applicant] certifies that by signing this sworn statement that the [Applicant] and all related parties have filed all reports for state grants received as required by W. Va. Code §12-4-14."

**§126-205-7. Grant Awards.**

7.1. All grant awards of CPSSF funding are subject to the following:

7.1.a. The Grantee shall only expend CPSSF grant funds for the item(s) identified in its application to the PCSB.

7.1.b. The Grantee shall comply with W. Va. 126CSR202, Purchasing Policies for Local Education Agencies, (Policy 8200), in procuring any goods or services in connection with the expenditure of its CPSSF funding.

7.1.c. If the Grantee has been awarded CPSSF grant funds to purchase a school bus or buses, such bus or buses shall conform to the West Virginia Minimum Requirements for Design and Equipment of School Buses contained in W. Va. 126CSR92, West Virginia School Bus Transportation Regulations, Procedures and Specifications for the Design and Equipment of School Buses, Policy 4336.

7.1.d. The PCSB, as the grantor of CPSSF grant funds, and the Grantee shall comply with the West Virginia Grant Transparency and Accountability established in W. Va. Code §12-4-14, W. Va. 155CSR9, and the requirements of this rule.

7.1.e. A Grantee shall not grant or assign any part of its CPSSF grant funds to a subgrantee or any other party.

7.2. The PCSB and the Grantee shall enter into a grant agreement that contains, at a minimum, the following:

7.2.a. The name and business address of the Grantee;

7.2.b. The amount of CPSSF funding granted by the PCSB to the Grantee and whether or not it is an initial grant of CPSSF funding under W. Va. Code §18-5G-17(c)(1) or an additional grant of CPSSF funding under W. Va. Code §18-5G-17(c)(2);

7.2.c. The item or items for which the CPSSF funding was granted;

7.2.d. The budget for the expenditure of the CPSSF funding that was granted;

7.2.e. The time period in which the CPSSF funding shall be expended;

7.2.f. A clause in compliance with section 8 of W. Va. 155CSR9 and section 6.8.a of this rule, unless the grantee has submitted a separate sworn notarized statement in compliance with section 8 of W. Va. 155CSR9 and section 6.8.b of this rule;

7.2.g. An affirmation, if applicable, that the Grantee shall reimburse the PCSB the full amount of the grant plus interest calculated at a prorated rate of ten percent a year if it fails to begin operating a charter school within thirty months after an initial grant is awarded and/or after an additional grant is awarded, unless the PCSB grants an extension of the thirty-month time period for extenuating circumstances;

7.2.h. A sworn affirmation by the Grantee that it shall conform to all requirements of W. Va. Code §§18-5G-1 *et seq.*, the West Virginia Grant Transparency and Accountability Act established in W. Va. Code §12-4-14, W. Va. 155CSR9, the requirements of this rule; and, the requirements of any other WVBE applicable rule including, but not limited to, Policy 8200 and Policy 4336.

**§126-205-8. Grant Extensions.**

8.1. Pursuant to W. Va. Code §18-5G-17(c)(1) and (2), the PCSB is authorized to grant an extension of the thirty-month time period within which a Grantee is required to begin operating a charter public school after either an initial grant and/or an additional grant of CPSSF funds is awarded. Such extensions shall:

8.1.a. Only be granted for extenuating circumstances which have been demonstrated to have prevented the Grantee from beginning the operation of a charter public school within the thirty-month period; and

8.1.b. Only be granted for a specific and defined time period, not to exceed one year.

8.2. For the purpose of this rule, the term “extenuating circumstances” shall mean an unforeseen, exceptional, nonrecurring event that is beyond the Grantee’s control. “Extenuating circumstances” shall not mean mismanagement, poor planning, disorganization, lack of competence or other malfeasance.

8.3. Any grant extension considered, or acted upon, by the PCSB shall be done in a public meeting held in compliance with the West Virginia Open Governmental Proceedings Act, W. Va. Code §§6-9A-1 *et seq.*

8.4. If a grant extension is granted by the PCSB after a majority vote at a public meeting:

8.4.a. The PCSB shall notify the Grantee in writing of the extenuating circumstances that the PCSB found to justify the extension and the specific time period of the extension.

8.4.b. The PCSB and the Grantee shall enter into a written amendment to the grant agreement required by section 7.2 of this rule in which the terms and conditions of the grant extension are specified.

**§126-205-9. Administration, Transparency, and Reporting.**

9.1. The PCSB, Applicants and/or Grantees shall administer the CPSSF in accordance with the requirements of W. Va. Code §18-5G-17, W. Va. 155CSR9, and the requirements of this rule.

9.2. In order to allow the WVBE to fulfill its general supervisory responsibilities under Article XII, §2 of the W. Va. Constitution and its responsibility under W. Va. Code §18-5G-4(b)(5) to establish reporting requirements to monitor the performance and legal compliance of authorizers and public charter schools, the PCSB shall report the following:

9.2.a. Beginning on July 1 of the first full year following a legislative appropriation and/or other allowable funding being deposited into the CPSSF, the PCSB shall annually submit a written report to the WVBE on the status of monies granted from such Fund. The report shall contain, at a minimum, the following:

9.2.a.1. The name(s) and addresses of the Applicants for CPSSF financial support;

9.2.a.2. Whether each Applicant sought CPSSF funding to enable it to successfully apply to an authorizer or whether the Applicant has already been approved by an authorizer to operate a charter public school and sought funding for start-up costs.

9.2.a.3. Whether each Applicant's application was denied or approved and, if approved, the amount of CPSSF funding granted to each Applicant.

9.2.a.4. A copy of each application and accompanying documentation for CPSSF funding received by the PCSB.

9.2.a.5. A copy of each CPSSF funding agreement the PCSB entered into with a Grantee.

9.2.b. If a Grantee fails to begin operating a charter public school within thirty months from the date it receives an initial grant made pursuant to W. Va. Code § 8-5G-17(c)(1) or an additional grant made pursuant to W. Va. Code §18-5G-17(c)(2), the PCSB shall immediately notify the WVBE in writing.

9.2.c. If the PCSB extends the thirty-month period within which a Grantee may begin operating a charter school in accordance with W. Va. Code §18-5G-17(c)(1) and (2), the PCSB shall make a written report of the extension to the WVBE. The report shall include, at a minimum, the name of the Grantee; a description of the extenuating circumstances justifying the extension; and, the length of time for which the extension was granted.

9.2.d. If a Grantee fails to begin operating a charter public school within an extension period granted by the PCSB in accordance with W. Va. Code §18-5G-17(c)(1) and/or (2), the PCSB shall immediately notify the WVBE in writing. The notification shall include a description of the PCSB's plan to obtain reimbursement of grant funds from the recipient.

9.2.e. If at any time, a Grantee fails to fully reimburse grant funds to the PCSB and/or fails to make a timely reimbursement payment pursuant to requirements imposed by the PCSB, the PCSB shall immediately notify the WVBE in writing. Such notification shall include a description of the PCSB's plan to collect the amount owed by the Grantee.

9.2.f. The PCSB shall provide copies of all reports, notifications, or other documents it generates, issues, or receives in connection with W. Va. 155CSR9 compliance to the WVBE.