
[External] Administrative Rules 112-18 Hope Scholarship

From Jennings Berry <coachjgberry@gmail.com>

Date Thu 7/23/2026 11:35 AM

To Fuerhoff, James <james.fuerhoff@wvsto.gov>

CAUTION: This e-mail originated from outside of the WVSTO. Please exercise caution.

Good morning, Mr. Fuerhoff,

My name is Jennings Berry, and I am writing regarding the proposed Hope Scholarship Program rule and the importance of public oversight and ethical public administration. I work with publicly funded projects through a regional planning and development council, and my academic research has focused on public trust and leadership in government. Together, these experiences have reinforced the responsibility that comes with managing taxpayer dollars. Every dollar entrusted to a public program carries an obligation for transparency, accountability, and measurable public benefit. Public confidence depends not only on complying with the law but on ensuring that public resources are administered openly, responsibly, and in a manner that earns the trust of the communities they serve.

I respectfully urge the Treasurer's Office to strengthen the proposed Hope Scholarship Program rule by requiring meaningful financial reporting, independent oversight, and clear public disclosure regarding the use of taxpayer funds and educational outcomes. If public dollars are funding private educational expenses, taxpayers deserve to know how those funds are being spent, whether participating providers are meeting consistent standards, and whether the program is achieving its stated objectives.

My concern is not with families seeking educational opportunities for their children. Rather, it is with ensuring that public funds are administered according to the same principles of fiscal stewardship and public accountability expected throughout state and local government. Strong oversight should not be viewed as a burden; it is a fundamental responsibility of good governance and an essential safeguard for maintaining public trust.

As someone born and raised in West Virginia, I also recognize that many of our public schools serve as the heart of their communities. They are more than educational institutions; they are centers for meals, transportation, special education services, extracurricular activities, and civic life. Administrative rules should therefore be written carefully to ensure that educational choice is balanced with transparency, accountability, and consideration for the long-term health of the public education system that continues to serve every child.

Ultimately, public trust is earned through openness, responsible stewardship of taxpayer resources, and consistent oversight. I encourage the Treasurer's Office to adopt rules that reflect these principles and strengthen public confidence in the administration of the Hope Scholarship Program.

Respectfully,

Jennings Berry

Ph.D. Candidate, Leadership Studies (Public Administration)

University of the Cumberland

HOPE SCHOLARSHIP

WEST VIRGINIA

July 29, 2026

Mr. Berry Jennings
coachjgberry@gmail.com

Mr. Jennings:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. Below you will find a summarization of the comments received and the Board's responses to those comments.

Comment: Mr. Berry respectfully urged the Treasurer's Office to strengthen the proposed Hope Scholarship Program rule by requiring meaningful financial reporting, independent oversight, and clear public disclosure regarding the use of taxpayer funds and educational outcomes. If public dollars are funding private educational expenses, taxpayers deserve to know how those funds are being spent, whether participating providers are meeting consistent standards, and whether the program is achieving its stated objectives.

Response: Since the inception of the Hope Scholarship Program, the Board has prepared and published annual reports showing an accounting of where all scholarship dollars are spent. Any member of the public can assess those reports utilizing the following link: <https://hopescholarshipwv.gov/Home/About/Annual-Reports>. West Virginia Code §18-31-8 governs the annual academic reporting requirements of students participating in the Hope Scholarship Program. Additionally, W.Va. Code §18-31-14 governs all reporting requirements for the Hope Scholarship Program and any changes to how the Program collects or discloses financial reports or educational outcomes would require a statutory change. Further, the Board is not authorized by law to create additional academic reporting requirements or require public disclosure of existing reporting requirements via legislative rule. The State Treasurer's Office made no change to the rule as a result of this public comment.

Thank you again for your review and submission of comments to the Hope Scholarship Board.

Sincerely,



Lindsay Marchio
General Counsel

Thank you for providing the opportunity to comment on **SERIES 18 HOPE SCHOLARSHIP PROGRAM**. I submit these comments from the perspective of a lifelong educator with extensive experience in public and private schools, and as a former member of the West Virginia Board of Education. Debra K. Sullivan

- 1) **General statement regarding lack of guardrails for the Hope Program and its effect on undermining the common good.** Hope has no family income caps, no limit on the amount of Hope funds families can receive annually or over time, no fixed state budget, no lid on the number of scholarships awarded. Such fiscal irresponsibility undermines the public's trust in state government. Public schools are the backbone of democracy yet elected officials are choosing to divert funds away from public schools and paring down funds supporting other public services that affect all state residents.
- 2) **General statement regarding burdensome impact of Hope on county boards of education.** County boards of education carry tremendous burdens created under Hope legislation and receive no compensation for their work. Their tasks include but are not limited to setting up WWEIS numbers for Hope participants; enrolling and unenrolling and reenrolling them in public schools and nonpublic schools, microschools, and homeschools as they move from one option to another and back again; following up on submissions of various items from Hope parents including Notices of Intent, affidavits related to attendance and other matters, homeschoolers' submissions of annual assessment results; and more. All of this administrative work is done at a high cost to county boards' own public school students as human and fiscal resources are diverted away from increasingly underfunded public schools. Yet county boards of education receive not one penny for services rendered. In comparison, the Hope Scholarship Board is eligible to receive up to 5 percent of the total Hope allocation each year. The State Treasurer's Office and the Hope Scholarship Board need to take much more ownership of the operation of the Hope program rather than foisting it off on county boards of education.
- 3) **General statement regarding lack of transparency related to the Hope "product."** Readily available, updated reports on public schools are massive

and examine achievement, discipline, attendance, dropout rates, and other facts. Despite the urgent need to determine whether children are indeed prospering from Hope's educational experiment, and despite the fact that state tax dollars are paying for Hope, neither parents, taxpayers, nor elected officials are getting a full accounting of the educational impact on recipients, most importantly academic achievement, promotion, graduation, discipline, and attendance information. No such information is publicly available.

While public school children are tested on state-approved assessment instruments, under standardized testing conditions by trained, certified teacher proctors, Hope lacks consistency regarding assessment requirements, outcomes, and reporting. Notably, even within Hope-related code, expectations for Hope recipients who are homeschooled differ from those attending nonpublic schools and microschools. For example, Hope homeschoolers must submit an annual portfolio review conducted by a person of their choosing, or present results from their choice of a variety of nationally normed tests. On the other hand, it appears that for Hope recipients attending nonpublic schools and microschools, letters merely declaring that individual children attended school during the school year are acceptable. (see 18-31-8 annual continuation of Hope Scholarships)

State tax dollars are funding Hope. The public and elected officials have a rightful claim to see the impact of their funding of Hope recipients.

EVERY Hope recipient, regardless of their enrollment in any educational setting, must be tested annually using the same testing instruments used in public schools and using well established testing administration procedures. These testing results -- along with information on attendance, promotion, graduation, and discipline -- should be publicly available, showing results for individual nonpublic schools (virtual and brick-and-mortar) and individual microschools. How else can the Hope product be compared to the product of local public

schools? Homeschoolers' achievement results should also be available, aggregated at least at the county level.

- 4) **General statement regarding lack of diligence by the Hope Scholarship Board in providing required information to parents.** Despite language in state code 18-31-9(d), the Hope Scholarship Board has NOT demonstrated on its website that it has “. . . a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about participating schools and education service providers.” (emphasis added)

Hope parents spend down their funds without reliable information on who or what they're trusting to educate their children.

- 5) **General statement regarding schools and other education providers.** The approval process for Hope providers, the hundreds of vendors and in-person and on-line schools, individuals, and groups selling services, is dangerously weak. The Hope Scholarship Board's requirements for approval of Hope providers appear to be limited to the name, address, type of service offered, and a bank account number to link to families' Hope dollars. Effectiveness is not addressed. This is a grave disservice to the thousands of children receiving Hope support, to their families, and to West Virginia's future prosperity.
- 6) **General statement on children's future prospects including stability of education paths, academic progress, civic engagement, and personal development.** County boards of education are dealing with the reality that children are ricocheting out of their Hope-funded programs, or reeling from one program to another, finding these programs to be cumbersome or ineffective, returning to their public schools, with some children suffering gaps in their schooling that may take years to overcome. Are elected officials aware of this and examining this alarming trend?
- 7) **General statement on use of Hope funds.** While some items on the Hope Board's list of approved expenses make sense (e.g., tuition, curricular programs), others raise questions. Replacing computers and white boards on a short time

cycle, for example. Beyond that, Hope dollars support participation in activities that public school parents must pay for out of their own pockets, such as summer camps, dance and horseback lessons, tutoring, preparation for Advancement Placement tests, admission to museums, and the like. How can this be justified?

- 8) **General statement on out-of-state education providers.** Hundreds of thousands of Hope dollars are being sent to the farthest reaches of the United States and beyond – New Hampshire and Wisconsin to the north, Florida to the south, and Texas, Washington state, California to the west, and all points in between. It even appears that Vancouver, Canada, is benefitting from West Virginia dollars. It's past time to rein in expenditures of West Virginia dollars to non-West Virginia entities.
- 9) **General statement on rigor of language in Hope code.** The word “may” is used throughout the code, giving the impression that something may or may not need to be done. The code needs to be carefully reviewed to ensure that “musts” or “shalls” are embedded in items that must occur. Two examples:
- 11.2.1. A West Virginia county board of education or public education entity offering services to Hope Scholarship students **may** be automatically considered to be an authorized education service provider and is exempt from the requirements of this section . . . **(emphasis added)**

The statement should say that county boards of education **SHALL** be considered authorized providers. This fact is not debatable and language in code should reflect that.

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

SHALL is the proper word here, too. Any ESP receiving the amount of money cited should be required to provide a surety bond.

- 10) **General statement on Hope participants.** How many children receiving Hope Scholarships were never enrolled in public schools in the first place, their parents having chosen to homeschool or use private schools prior to the voucher program, indicating that they were willing and able to pay on their own? Has

Hope provided new opportunities for children or has it merely shifted money into the pockets of those who had already made the choice to not enroll their children in public schools?

Beyond those general remarks, there are some specific points to consider regarding SERIES 18 HOPE SCHOLARSHIP PROGRAM.

- 1) It appears that “private” is being changed to “nonpublic” in the amended bill but the change is not consistently applied throughout the document.

2) **MICROSCHOOL ISSUES**

In the **definition section**, MICROSCHOOL is not defined yet these entities are included as viable recipients of Hope Scholarship funds. The definition, inadequate though it is, in 18-8-1 should at least be included in the Series 18 code under consideration for amendment -- “microschool means a school initiated by one or more teachers or an entity created to operate a school that charges tuition for the students who enroll and is an alternative to enrolling in a public school, private school, homeschool, or learning pod.”

SIZE: Microschools need to be more definitively addressed in the Hope code under consideration as well as in 18-8-1. What are the limitations on number of children to be considered a “microschool?” Numerous data sources relating to microschools in the United States define microschools as typically enrolling 15 to 20 children. West Virginia needs to set a size limit in-line with national standards. It is alarming that, based on information included in annual Hope reports from the State Treasurer’s Office, some West Virginia “microschools” enroll over a hundred students.

GROWTH OF MICROSCHOOL MOVEMENT IN WEST VIRGINIA. It appears likely that some microschool founders are choosing a work-around, opening microschools as opposed to opening nonpublic schools because they can collect Hope dollars while being basically free from most educational, personnel, health, and safety expectations. While some microschools meet such national size

expectations, others appear to be questionable and should not be funded as microschools but should follow the process through the West Virginia Department of Education to become nonpublic schools and to abide by those expectations.

- 3) **State codes in general referring to Hope scholarships are not properly synced and need to be revised to ensure that the various codes impacting, relating to, or affected by the Hope Program are properly aligned and not in conflict.** They need to be given a general organizational and content overhaul or should at least be included in user-friendly fashion in the Hope Scholarship Board's checklist for students, parents, education service providers, county boards of education, West Virginia Department of Education, etc.

SOME EXAMPLES:

- A) Testing requirements governed by various state codes that may be in conflict or inadequately presented in Hope code(s).**

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

This submission is only required of homeschoolers. There is no mention of testing requirements for the thousands of Hope recipients attending nonpublic schools and microschools. In the Hope code under consideration, one section regarding continuation of Hope scholarships year-to-year mentions all students' attendance and academics without citing specifics:

4.2.1.c. The parent must **report to the county superintendent of the student's county of residence that the student has complied with all attendance and academic requirements in accordance** with W.Va. Code §18-31-8(a) for the most recent school year. **(emphasis added)**

Why are homeschoolers' requirements highlighted but not requirements for the thousands of children attending nonpublic schools and microschools?

It should be noted that state code 18-28-3 mandates testing requirements for nonpublic schools of all types which by extension would include "nonpublic" microschools:

18-28-3. Standardized testing requirements.

(a) Each private, parochial, or church school or school of a religious order or other non-public school electing to operate under this statute in lieu of the approval requirements set forth as part of §18-8-1(b) of this code **shall administer during each school year a nationally normed standardized achievement test... The student participation rate on the standardized achievement test must be the same as that required in the public schools for a school's composite score to be considered valid. (emphasis added)**

Section (d) in 18-23-3 provides additional information that should inform the Hope code. Namely:

(d) Each child's testing or assessment results and the school composite results shall be made available to the child's parents or legal guardians. Upon request, **the school composite results also shall be made available to the parents or legal guardians of a prospective enrollee in the school.** Upon request of a duly authorized representative of the West Virginia Department of Education, **the school's composite results shall be furnished to the State Superintendent of Schools. (emphasis added)**

Sections (a) and (d) raise at least three questions: 1) Are nonpublic schools and microschools administering such tests and are participation rates up to the standard expected in public schools? 2) School composite results are expected to be made available **publicly** to enable parents who are considering having their children enroll in nonpublic schools to get a glimpse into the quality of those schools. If such information is expected to be available, why isn't the Hope Scholarship Board providing such information in its annual reports and on its website? 3) Are nonpublic schools and microschools submitting composite results – disaggregated by grade level as is expected of public schools -- to the West Virginia Department of Education, if not why not, and why aren't these results being included on the WVDE website in a manner similar to public school results?

B) State code governing compulsory school attendance and the role of county boards of education, including boards' involvement in approving nonpublic schools, including microschools.

WV Code 18-8-1. Compulsory school attendance; exemptions has a lot to say that has a direct impact on Hope state code. How are these items being addressed in SERIES 18 HOPE SCHOLARSHIP PROGRAM?

(b) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial, or other approved school, are met. **The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code.** (emphasis added)

This section indicates that county board of education approval is required if attending a nonpublic entity is to be considered a viable way to meet compulsory attendance requirements.

Two questions come to mind here: 1) have all nonpublic schools and microschools that receive Hope dollars in fact been approved by county boards of education? 2) what level of scrutiny does that "approval" consist of?

Section (b) goes on to say:

In all private, parochial, or other schools approved pursuant to this subsection [regarding compulsory school attendance], **it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction, and progress of students enrolled.** (emphasis added)

The county superintendent should not have to "request" such information.

Section (c) deals with homeschooled children related to **compulsory school attendance.**

(c) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place **approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code.** . . . The instruction shall be conducted by a person or persons who, **in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state.** The person or persons providing the instruction, upon request of the county superintendent, **shall furnish** to the county board information and records as may be required periodically **with respect to**

attendance, instruction, and progress of students receiving the instruction. " (emphasis added)

Again, the county board of education is expected to oversee submissions of documents from all homeschoolers, including those on Hope scholarships.

The Hope Scholarship program has created a whirlwind of debate, confusion, and distrust.

Is it worth it?



July 29, 2026

Ms. Debra Sullivan
debraksullivan@hotmail.com

Ms. Sullivan:

Thank you for your comments in response to the Hope Scholarship Board's legislative rule 112 CSR 18. Below you will find a summarization of the comments received and the Board's responses to those comments.

Comment: General statement regarding lack of guardrails for the Hope Program and its effect on undermining the common good. Hope has no family income caps, no limit on the amount of Hope funds families can receive annually or overtime, no fixed state budget, no lid on the number of scholarships awarded. Such fiscal irresponsibility undermines the public's trust in state government. Public schools are the backbone of democracy yet elected officials are choosing to divert funds away from public schools and paring down funds supporting other public services that affect all state residents.

Response: The Hope Scholarship Board is statutorily charged with the administration of this program and has no legal authority to alter the Hope Scholarship Act. The Board is not authorized by law to establish income caps, limits on the amount of Hope funds a family can receive, or to limit how much money the Legislature can spend on the Program via legislative rule. The State Treasurer's Office made no change to the rule as a result of this public comment.

Comment: General statement regarding burdensome impact of Hope on county boards of education. County boards of education carry tremendous burdens created under Hope legislation and receive no compensation for their work. Their tasks include but are not limited to setting up WVEIS numbers for Hope participants; enrolling and unenrolling and reenrolling them in public schools and nonpublic schools, microschools, and homeschools as they move from one option to another and back again; following up on submissions of various items from Hope parents including Notices of Intent, affidavits related to attendance and other matters, homeschoolers' submissions of annual assessment results; and more. All of this administrative work is done at a high cost to county boards' own public school students as human and fiscal resources are diverted away from

increasingly underfunded public schools. Yet county boards of education receive not one penny for services rendered. In comparison, the Hope Scholarship Board is eligible to receive up to 5 percent of the total Hope allocation each year. The State Treasurer's Office and the Hope Scholarship Board need to take much more ownership of the operation of the Hope program rather than foisting it off on county boards of education.

Response: The Hope Scholarship Act does require county boards of education to assist in a number of administrative tasks in order for the Treasurer's Office to ensure compliance with academic progress reporting, notice of intent requirements, and to ensure all Hope students are not enrolled in a full-time public school program. The Treasurer's Office and Hope Scholarship Board greatly appreciate the collaborative relationship we have with local county boards of education and the West Virginia Department of Education. However, the Hope Scholarship Board is not authorized by law to change any of these processes mandated in the Hope Scholarship Act via legislative rule. The State Treasurer's Office made no change to the rule as a result of this public comment.

Comment: General statement regarding lack of transparency related to the Hope "product." Readily available, updated reports on public schools are massive and examine achievement, discipline, attendance, dropout rates, and other facts. Despite the urgent need to determine whether children are indeed prospering from Hope's educational experiment, and despite the fact that state tax dollars are paying for Hope, neither parents, taxpayers, nor elected officials are getting a full accounting of the educational impact on recipients, most importantly academic achievement, promotion, graduation, discipline, and attendance information. No such information is publicly available. While public school children are tested on state-approved assessment instruments, under standardized testing conditions by trained, certified teacher proctors, Hope lacks consistency regarding assessment requirements, outcomes, and reporting. Notably, even within Hope-related code, expectations for Hope recipients who are homeschooled differ from those attending nonpublic schools and microschools. For example, Hope homeschoolers must submit an annual portfolio review conducted by a person of their choosing, or present results from their choice of a variety of nationally normed tests. On the other hand, it appears that for Hope recipients attending nonpublic schools and microschools, letters merely declaring that individual children attended school during the school year are acceptable. (see 18-31-8 annual continuation of Hope Scholarships). State tax dollars are funding Hope. The public and elected officials have a rightful claim to see the impact of their funding of Hope recipients. EVERY Hope recipient, regardless of their enrollment in any educational setting, must be tested annually using the same testing instruments used in public schools and using well established testing administration procedures. These testing results -- along with information on attendance, promotion, graduation, and discipline -- should be publicly available, showing results for individual nonpublic schools (virtual and brick-and-mortar) and individual microschools. How else can the Hope product be compared to the product of local public schools? Homeschoolers' achievement results should also be available, aggregated at least at the county level.

Response: You have identified the relevant code sections relating to academic progress requirements and reporting for Hope Scholarship students; however, the Hope Scholarship Board is not authorized by law to change those requirements and subject all students to the same testing requirements in contradiction to the Hope Scholarship Act via legislative rule. Additionally, the Hope Scholarship Board does not collect any information regarding academic progress, attendance, or discipline. The local county boards of education receive academic progress and confirmation of attendance for all Hope Scholarship students so the Hope Scholarship Board is unable to produce that information. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement regarding lack of diligence by the Hope Scholarship Board in providing required information to parents. Despite language in state code 18-31-9(d), the Hope Scholarship Board has NOT demonstrated on its website that it has “. . . a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about participating schools and education service providers.” (emphasis added)

Hope parents spend down their funds without reliable information on who or what they're trusting to educate their children.

Response: The relevant code section is not a requirement of the Hope Scholarship Act. Additionally, if the Board were able to implement a mechanism for rating and reviewing education service providers, those would be integrated solely within the Hope Scholarship portal, consistent with the statutory language, for parents to be able to review as opposed to located on the Hope Scholarship Board's website. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement regarding schools and other education providers. The approval process for Hope providers, the hundreds of vendors and in-person and on-line schools, individuals, and groups selling services, is dangerously weak. The Hope Scholarship Board's requirements for approval of Hope providers appear to be limited to the name, address, type of service offered, and a bank account number to link to families' Hope dollars. Effectiveness is not addressed. This is a grave disservice to the thousands of children receiving Hope support, to their families, and to West Virginia's future prosperity.

Response: West Virginia Code §18-31-11 lays out the requirements for an education service provider to be eligible to receive payments from a Hope Scholarship account. Due to the statutory language, the Hope Scholarship Board does not have the legal authority to create new requirements on education service providers to participate in the Program via legislative rule. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement on children's future prospects including stability of education paths, academic progress, civic engagement, and personal development. County boards of education are dealing with the reality that children are ricocheting out of their Hope-funded

programs, or reeling from one program to another, finding these programs to be cumbersome or ineffective, returning to their public schools, with some children suffering gaps in their schooling that may take years to overcome. Are elected officials aware of this and examining this alarming trend?

Response: This comment is beyond the authority of the Hope Scholarship Board. The Hope Scholarship Board does not dictate to parents how or where they should educate their child and cannot control students that may opt to return to public school. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement on use of Hope funds. While some items on the Hope Board's list of approved expenses make sense (e.g., tuition, curricular programs), others raise questions. Replacing computers and whiteboards on a short time cycle, for example. Beyond that, Hope dollars support participation in activities that public school parents must pay for out of their own pockets, such as summer camps, dance and horseback lessons, tutoring, preparation for Advancement Placement tests, admission to museums, and the like. How can this be justified?

Response: Many of these items are expressly permitted qualifying expenses as outlined in W.Va. Code §18-31-7 such as tutoring services, advanced placement and other assessments (including any preparatory courses for those exams), and after school and summer education programs. Additionally, §18-31-7(13) authorizes the Hope Scholarship Board to approve additional qualifying expenses that are not contemplated by the statute. West Virginia Code §18-31-5(3)(D) requires parents to afford Hope Scholarship students opportunities for educational enrichment such as organized athletics, art, music, or literature. These educational requirements provide context for extracurricular activities such as dance and horseback lessons as qualifying expenses. The State Treasurers' Office made no change as a result of this public comment.

Comment: General statement on out-of-state education providers. Hundreds of thousands of Hope dollars are being sent to the farthest reaches of the United States and beyond – New Hampshire and Wisconsin to the north, Florida to the south, and Texas, Washington state, California to the west, and all points in between. It even appears that Vancouver, Canada, is benefitting from West Virginia dollars. It's past time to rein in expenditures of West Virginia dollars to non-West Virginia entities.

Response: The Hope Scholarship Act does not limit Hope Scholarship funds from being spent at out-of-state providers. The Hope Scholarship Board does not have the legal authority to limit those expenditures via legislative rule. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement on rigor of language in Hope code. The word "may" is used throughout the code, giving the impression that something may or may not need to be done. The code needs to be carefully reviewed to ensure that "musts" or "shall" are embedded in items that must occur. Two examples:

11.2.1. A West Virginia county board of education or public education entity offering services to Hope Scholarship students may be automatically considered to be an authorized education service provider and is exempt from the requirements of this section . . . (emphasis added)

The statement should say that county boards of education SHALL be considered authorized providers. This fact is not debatable and language in code should reflect that.

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

SHALL is the proper word here, too. Any ESP receiving the amount of money cited should be required to provide a surety bond.

Response: While most local county boards of education have opted to participate in the Hope Scholarship Program, the Board utilized permissive language in subsection 11.2.1. of the rule so that it would not be a requirement of county boards if no students in a given county were participating in any public school class or extracurricular activity. In practice, no county has ever been prevented from participation in the Hope Scholarship Program. The language in subsection 11.2.2. is also permissive as there is no statutory surety bond requirement in W.Va. Code §18-31-11 that governs requirements of education service providers. The State Treasurer's Office made no change as a result of this public comment.

Comment: General statement on Hope participants. How many children receiving Hope Scholarships were never enrolled in public schools in the first place, their parents having chosen to homeschool or use private schools prior to the voucher program, indicating that they were willing and able to pay on their own? Has Hope provided new opportunities for children or has it merely shifted money into the pockets of those who had already made the choice to not enroll their children in public schools?

Response: The Hope Scholarship Board does not collect information relevant to your public comment. However, this comment is also not germane to the legislative rule. The State Treasurer's Office made no change as a result of this public comment.

Comment: It appears that "private" is being changed to "nonpublic" in the amended bill but the change is not consistently applied throughout the document.

Response: The State Treasurer's Office agrees the language could be more consistent throughout. Therefore, the rule has been amended in subsection 9.2.1. to strike the words "Private or parochial" and insert the word "Nonpublic." The rule has also been amended in subsection 9.2.4. to change the word "private" to "nonpublic" in two instances.

Comment: MICROSCHOOL ISSUES

In the definition section, MICROSCHOOL is not defined yet these entities are included as viable recipients of Hope Scholarship funds. The definition, inadequate though it is, in 18-8-1 should at least be included in the Series 18 code under consideration for amendment -- "microschool means a school initiated by one or more teachers or an entity created to operate a school that charges tuition for the students who enroll and is an alternative to enrolling in a public school, private school, homeschool, or learning pod."

Response: The legislative rule cross references the statutory definition of microschool in W.Va. Code §18-8-1. The primary purpose of legislative rules is to give greater detail and clarify ambiguous aspects of the underlying statute. Incorporating a definition already in law would be duplicative. The State Treasurer's Office made no change as a result of this public comment.

SIZE: Microschools need to be more definitively addressed in the Hope code under consideration as well as in 18-8-1. What are the limitations on number of children to be considered a "microschool?" Numerous data sources relating to microschools in the United States define microschools as typically enrolling 15 to 20 children. West Virginia needs to set a size limit in-line with national standards. It is alarming that, based on information included in annual Hope reports from the State Treasurer's Office, some West Virginia "microschools" enroll over a hundred students.

Response: The definition of a microschool in W.Va. Code §18-8-1(n)(B) does not establish such a limitation on the size of a microschool. Therefore, the Hope Scholarship Board is not authorized by law to institute such a limitation via legislative rule. The State Treasurer's Office made no change as a result of this public comment.

GROWTH OF MICROSCHOOL MOVEMENT IN WEST VIRGINIA. It appears likely that some microschool founders are choosing a work-around, opening microschools as opposed to opening nonpublic schools because they can collect Hope dollars while being basically free from most educational, personnel, health, and safety expectations. While some microschools meet such national size expectations, others appear to be questionable and should not be funded as microschools but should follow the process through the West Virginia Department of Education to become nonpublic schools and to abide by those expectations.

Response: West Virginia Code §18-8-1(n)(8) explicitly states, "*No learning pod or microschool which meets the requirements of this subsection is subject to any other provision of law relating to education: Provided, That any learning pod or microschool which has a student requiring special education instruction must comply with the provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for the protection of that exceptional student.*" Therefore, the Hope Scholarship Board is not authorized by law to subject microschools to the same requirements as non-public schools via legislative rule. The State Treasurer's Office made no change as a result of this public comment.

Comment: State codes in general referring to Hope scholarships are not properly synced and need to be revised to ensure that the various codes impacting, relating to, or affected by the Hope Program are properly aligned and not in conflict. They need to be given a general organizational and content overhaul or should at least be included in user-friendly fashion in the Hope Scholarship Board's checklist for students, parents, education service providers, county boards of education, West Virginia Department of Education, etc.

SOME EXAMPLES:

A) Testing requirements governed by various state codes that may be in conflict or inadequately presented in Hope code(s).

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

This submission is only required of homeschoolers. There is no mention of testing requirements for the thousands of Hope recipients attending nonpublic schools and microschools. In the Hope code under consideration, one section regarding continuation of Hope scholarships year-to-year mentions all students' attendance and academics without citing specifics:

4.2.1.c. The parent must report to the county superintendent of the student's county of residence that the student has complied with all attendance and academic requirements in accordance with W.Va. Code §18-31-8(a) for the most recent school year. (emphasis added)

Why are homeschoolers' requirements highlighted but not requirements for the thousands of children attending nonpublic schools and microschools?

Response: West Virginia Code §18-31-8(a)(3) requires Hope students attending a *participating school* to submit annual confirmation of the student's continued attendance at the nonpublic school. On the other hand, W.Va. Code §18-31-8(a)(4) requires Hope students choosing an *individualized instructional program* to take a nationally normed standardized achievement test or a certified teacher's review of the student's academic work annually. This distinction is required by the Hope Scholarship Act, and therefore, cannot be changed via legislative rule. The State Treasurer's Office made no change as a result of this public comment.

It should be noted that state code 18-28-3 mandates testing requirements for nonpublic schools of all types which by extension would include "nonpublic" microschools:

18-28-3. Standardized testing requirements.

(a) Each private, parochial, or church school or school of a religious order or other non-public school electing to operate under this statute in lieu of the approval requirements set forth as part

of §18-8-1(b) of this code shall administer during each school year a nationally normed standardized achievement test... The student participation rate on the standardized achievement test must be the same as that required in the public schools for a school's composite score to be considered valid. (emphasis added)

Section (d) in 18-23-3 provides additional information that should inform the Hope code. Namely:

(d) Each child's testing or assessment results and the school composite results shall be made available to the child's parents or legal guardians. Upon request, the school composite results also shall be made available to the parents or legal guardians of a prospective enrollee in the school. Upon request of a duly authorized representative of the West Virginia Department of Education, the school's composite results shall be furnished to the State Superintendent of Schools. (emphasis added)

Sections (a) and (d) raise at least three questions: 1) Are nonpublic schools and microschools administering such tests and are participation rates up to the standard expected in public schools? 2) School composite results are expected to be made available publicly to enable parents who are considering having their children enroll in nonpublic schools to get a glimpse into the quality of those schools. If such information is expected to be available, why isn't the Hope Scholarship Board providing such information in its annual reports and on its website? 3) Are nonpublic schools and microschools submitting composite results – disaggregated by grade level as is expected of public schools -- to the West Virginia Department of Education, if not why not, and why aren't these results being included on the WVDE website in a manner similar to public school results?

Response: West Virginia Code §18-23-3 applies only to nonpublic schools, *not microschools*. To broadly answer the question, all non-public schools in the state, absent any exemptions that may or may not exist in law, are required to administer such tests. You correctly state that West Virginia Code §18-23-3 does permit prospective parents and the West Virginia Department of Education to request composite results of those tests. However, §18-23-3 does not permit the Hope Scholarship Board to request those results, and therefore, has no mechanism to include such results in the Board's annual reports. The State Treasurer's Office made no change as a result of this public comment.

B) State code governing compulsory school attendance and the role of county boards of education, including boards' involvement in approving nonpublic schools, including microschools.

WV Code 18-8-1. Compulsory school attendance; exemptions has a lot to say that has a direct impact on Hope state code. How are these items being addressed in SERIES 18 HOPE SCHOLARSHIP PROGRAM?

(b) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial, or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. (emphasis added)

This section indicates that county board of education approval is required if attending a nonpublic entity is to be considered a viable way to meet compulsory attendance requirements.

Two questions come to mind here: 1) have all nonpublic schools and microschools that receive Hope dollars in fact been approved by county boards of education? 2) what level of scrutiny does that “approval” consist of?

Section (b) goes on to say:

In all private, parochial, or other schools approved pursuant to this subsection [regarding compulsory school attendance], it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction, and progress of students enrolled. (emphasis added)

The county superintendent should not have to “request” such information.

Section (c) deals with homeschooled children related to compulsory school attendance.

(c) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. . . . The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board information and records as may be required periodically with respect to attendance, instruction, and progress of students receiving the instruction. ” (emphasis added)

Again, the county board of education is expected to oversee submissions of documents from all homeschoolers, including those on Hope scholarships.

The Hope Scholarship program has created a whirlwind of debate, confusion, and distrust.

Is it worth it?

Response: The Hope Scholarship Board has no role in the exemption from compulsory school attendance process for any student to attend a nonpublic school program, homeschool program, microschool program, learning pod program, or participate in the Hope Scholarship Program and is therefore not the appropriate governmental entity to respond to such questions. Please refer these questions to the West Virginia Department of Education. The State Treasurer’s Office made no change as a result of this public comment.

Thank you again for your review and submission of comments to the Hope Scholarship Board.

Sincerely,


Lindsay Marchio
General Counsel