

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 52
ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS

§133-52-1. General.

1.1. Scope. – This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees above the associate level.

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

1.3. Filing Date. – March 1, 2023.

1.4. Effective Date. – April 1, 2023.

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

§133-52-2. Purpose.

2.1. The West Virginia Higher Education Policy Commission (Commission), through a process of granting authorization and annual reauthorization of baccalaureate and graduate level higher education institutions operating in West Virginia, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers within West Virginia. An institution authorized by the Commission is required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.

2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.

2.3. The Commission is responsible for the authorization of any institution, association, or organization external to or within the State which desires to offer postsecondary programs or credit-bearing courses in West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term "academy," "college," "institution," "university" or similar title, hereafter referred to as "institution."

2.4. The Commission is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs above the associate level except for those institutions exempted by the Commission under Section 4 of this rule. The process of conferring reauthorization by the Commission includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.

2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Commission on all items related to reauthorization prescribed in this rule.

2.6. The provisions of this rule apply to the annual reauthorization of any private institution in West Virginia which offers degrees above the associate level.

2.7. West Virginia's public universities shall remain continuously authorized to operate unless the Legislature takes affirmative action to suspend or discontinue its operations; *Provided*, That such public universities shall provide information delineated in Section 5.4 to the Commission upon request or as needed for reporting purposes.

2.8. The Commission shall make available information on institutional performance of all public institutions located in West Virginia, including Marshall University and West Virginia University, on the Commission's website and through other appropriate venues.

§133-52-3. Definitions.

3.1. "Accreditation" means a review of the quality of higher education institutions and programs to ensure that such institutions meet acceptable levels of quality, which is attained by the institution through meeting standards set by a nongovernmental entity (i.e., an accrediting organization recognized by the U.S. Department of Education) as well as federal and State government agencies authorized to set such standards.

3.2. "Authorization" means the status attained by the institution that allows the institution to offer postsecondary programs and courses within the State of West Virginia. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

3.3. "Chancellor" means the Chancellor for Higher Education as that term is defined by W. Va. Code §18B-2-1 or his or her designee.

3.4. "Commission" means the West Virginia Higher Education Policy Commission.

3.5. "Council" means the West Virginia Council for Community and Technical College Education.

3.6. "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.

3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary level which:

3.7.a. Offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward a baccalaureate, masters, doctorate, or other specialized certification or degree designation above the associate's degree level; or

3.7.b. Operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or

3.7.c. Uses the term "college" or "university," or words of like meaning in its name or in any

manner in connection with its academic affairs or business.

3.8. “Physical presence” means an actual presence in the State, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational services; dissemination of educational credentials; or enrollment, solicitation, or advertising. “Physical presence” shall include but not be limited to:

3.8.a. An instructional site within the state;

3.8.b. Dissemination of an educational credential from a location within the State.

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

3.8.d. Advertising, promotional material, or public solicitation in any form that targets West Virginia residents through distribution or advertising in the State;

3.8.e. Instructional delivery that receives assistance from any other organization within the State in that delivery; or

3.8.f. Clinical experiences, internships, or other similar curricular requirements.

3.8.g. Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Commission or West Virginia local school districts.

3.9. “Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for in West Virginia residents. This status is granted by the Commission when the institution demonstrates compliance with the requirements for such status.

3.10. “Religious, theological, or faith-based institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.

§133-52-4. Exemptions.

4.1. Any institution fully authorized by the Commission to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization except as provided in subsection 4.2.

4.2. The following institutions shall be exempt from the provisions of this rule:

4.2.a. Correspondence, business, occupational and trade schools which are regulated under West Virginia Code §18B-2B-9 and 135 C.S.R. 35, *Business, Occupational and Trade Schools*.

4.2.b. Out-of-state institutions:

4.2.b.1. Offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the State institution;

4.2.b.2. Offering a short course or seminar in which the instruction for the segment takes no more than 20 classroom hours and is not for college credit;

4.2.b.3. Offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;

4.2.b.4. Offering courses or programs at a location in West Virginia by the authority of the Commission for a designated period of time; or

4.2.b.5. Offering online courses or programs with Commission approval for a specified period of time.

4.2.c. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. 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 effect outcomes.

4.2.d. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in 133 C.S.R. 20, *Initial Authorization of Degree-Granting Institutions*, and offers no degree programs other than those specifically related to the institution's doctrine.

4.2.e. Those institutions subject to annual reauthorization by the West Virginia Council for Community and Technical College Education, pursuant to W. Va. Code § 18B-4-7 and 135 C.S.R. 52, *Annual Reauthorization of Degree-Granting Institutions*.

§133-52-5. Annual Reauthorization.

5.1. All authorized institutions, except West Virginia public universities and those previously exempted in subsection 4.2 of this rule, must annually submit a reauthorization application report in a format prescribed by the Chancellor. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.

5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.

5.3. Upon request by the Commission, authorized institutions must provide documentation necessary to assess the performance of the institution.

5.4. The reauthorization application shall include the following:

5.4.a. Name and address of the institution of higher education;

5.4.b. Chief executive officer's name, title, address, phone number, and email address;

5.4.c. Institutional liaison's name, title, address, phone number, and email address;

5.4.d. Verification of current accreditation status and copy of latest annual Higher Learning Commission Institutional Update Report;

5.4.e. Full and part-time student enrollments of resident and non-resident students for each term during the most recent reporting year;

5.4.f. A current schedule of fees and charges for tuition;

5.4.g. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year;

5.4.h. Graduation rates for undergraduate degree-seeking first-time, full-time freshmen for the most recent graduating six-year cohort year;

5.4.i. Licensure pass rates for completion of all professional programs, e.g., education, nursing, and engineering, for the most recent year;

5.4.j. A 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; and

5.4.k. Any additional information or data as deemed necessary.

5.5. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.

5.6. Upon receipt of the annual reauthorization application, Commission staff shall review the submitted documentation and render a recommendation to the Commission. The Chancellor may convene a compliance review committee to evaluate unique circumstances or possible issues associated with an institution's reauthorization application. The committee will analyze the information and advise the Chancellor regarding future action. The committee may be composed of:

5.6.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for authorization;

5.6.b. Persons who are representative of both public and private institutions;

5.6.c. Members of the Commission staff; and/or

5.6.d. Any other person(s) deemed necessary by the Chancellor.

5.7. Upon review of documentation the Chancellor shall recommend to the Commission that institutions that are found to be in compliance with generally accepted parameters of operation be reauthorized.

5.8. If after review of required documentation, Commission staff find that the institution is not in compliance with generally accepted parameters of operation, the Chancellor may request additional documentation for review.

5.9. Each institution shall provide all information the Chancellor considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring degrees.

5.9.a. Program information.

5.9.a.1. A list of current degree programs offered in West Virginia by the institution;

5.9.a.2. Results of any external degree program evaluation during the last year, if any;

5.9.a.3. A list of any degree programs that have ceased to be offered during the previous year;

5.9.b. Financial information.

5.9.b.1. The latest financial statement for the most recent fiscal year compiled and audited by an independent certified public accountant, including any management letters provided by the independent auditor.

5.9.c. Student information.

5.9.c.1. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges;

5.9.c.2. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years;

5.9.d. The Commission shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Commission staff.

5.10. On-site review.

5.10.a. The Commission staff, at the Chancellor's discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in 133 C.S.R. 20, *Initial Authorization for Degree-Granting Institutions*. The Commission staff may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data as necessary to render a thorough and comprehensive assessment. When possible, the visit will be scheduled at a time which is mutually convenient to the institution and Commission staff. The institution shall pay the reasonable expenses associated with the compliance review visit.

5.10.b. Following review of submitted documentation and any requisite site visit, the Commission staff will prepare an analysis of the findings.

5.10.c. Commission staff will provide a draft of its report prepared in accordance with this section to the institution for comment and correction of factual errors. The institution may provide the Commission a response to the report within 10 working days of receipt of the report. The institutional comments will be included with the Chancellor's recommendation presented to the Commission.

5.10.d. The Chancellor will develop a recommendation for the Commission regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended for reauthorization.

5.10.e. If the Chancellor finds that an institution does not meet the generally accepted higher education state standards of quality, the Chancellor will recommend to the Commission that it deny reauthorization of the institution. Once reauthorization is denied, the institution is subject to the authorization requirements, process, and review in 133 C.S.R. 20, *Initial Authorization of Degree-Granting Institutions*, in order to seek authorization to operate within West Virginia.

5.10.f. An institution submitting an annual reauthorization report determined by the Commission as meeting the standards for reauthorization shall retain its authorized status for the following year.

§133-52-6. [Reserved]

§133-52-7. Dissemination of Institutional Information.

7.1. The Commission shall make available to the public information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Commission's website or disseminated through other appropriate venues.

7.2. The Commission office shall maintain a list of institutions authorized to grant degrees and shall make such list available to the public.

§133-52-8. Change of Ownership and Control.

8.1. Authorization of an institution terminates when a change in ownership or control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within 10 business days after the change of ownership or control. Such institution shall submit an application reflecting the change in ownership and control and an application fee of \$500.

8.1.a. If an institution files an application requesting approval of a change of ownership and control more than 10 business days after such change takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in 133 C.S.R. 20, *Initial Authorization for Degree-Granting Institutions*.

8.1.b. An authorized institution shall notify the Commission of any anticipated change in ownership or control at least 30 days prior to the change in ownership and control.

§133-52-9. Reauthorization Fees.

9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.

9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization or suspension or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.

9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission.

9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

§133-52-10. Sanctions and Termination of State Authorization.

10.1. Intermediate sanctions. – If an institution fails to comply with the provisions for reauthorization in this rule, the Commission may progressively impose one or more of the following sanctions.

10.1.a. Require the submission and implementation of an improvement plan to address or correct problems identified by the Commission; and/or

10.1.b. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.

10.1.b.1. In addition to the foregoing, the Commission may suspend the ability of an institution to enroll future students and deny reauthorization for the next year if any of the following occur:

10.1.b.1.a. The institution fails to provide to the Commission an approved teach-out plan within the requisite time after being notified by its accreditor or the Commission that it needs to do so;

10.1.b.1.b. The institution continuously fails to provide essential student services in a timely manner, including without limitation processing transcript requests or financial aid; or

10.1.b.1.c. The institution fails to comply with State or federal wage and hour laws or employee compensation contracts or the statutory requirements regarding any required subscription to the Unemployment Compensation Fund or workers' compensation insurance, the payment of premiums or other charges as required to maintain such coverage, the timely filing of payroll reports, or the maintenance of adequate deposits.

10.2. Termination of state authorization.

10.2.a. An institution shall provide the Commission with a copy of any notice, warning, suspension, revocation, or other adverse action received from any national or regional accrediting agency within five business days of receipt of such notice. The Commission shall terminate the authorization of any institution that fails to fulfill any requirements prescribed by its accreditor within timeframes established by the accreditor.

10.2.b. The Commission may for good cause suspend, withdraw, or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any other appropriate action per 133 C.S.R. 20, *Initial Authorization of Degree-Granting Institutions*.

10.2.c. The Commission may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or submits an incomplete or unsatisfactory reauthorization application, as determined by Commission staff in accordance with the provisions of this rule.

10.2.d. The Commission shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:

10.2.d.1. Failed to maintain the minimum standards for conferring degrees;

10.2.d.2. Refused or failed to provide information to the Commission in a manner and within a reasonable timeframe as established by the Commission; or

10.2.d.3. Provided false, misleading, or incomplete information to the Commission.

10.2.e. The Commission shall terminate the authorization of an institution authorized as a religious, theological, or faith-based college that fails to meet the criteria for a religious institution. The Commission shall notify the institution of its action in writing and allow a phase-out period of not more than one additional academic term. The institution may file an appeal to the Commission within 10 business days of its receipt of the written notice. In the absence of a timely appeal, the termination shall be final.

10.3. Notification to cease offering degrees or degree credits. If an institution not authorized by the Commission offers degrees and/or degree credits in West Virginia, the Commission shall notify the institution by certified mail that it shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if the institution fail to comply.

§133-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.

11.1. 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 Commission of the date of discontinuance and the name and address of the agency where records will be maintained.

11.2. 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. Institutions shall retain financial aid records of each student and former student in accordance with State and federal law.

11.3. 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 Commission of the following:

11.3.a. The planned date of termination of postsecondary education operations;

11.3.b. The planned date for the transfer of student records;

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

11.3.d. The official at the organization who the institution has designated as the records custodian to provide official copies of records or transcripts upon request.

11.4. Any institution that fails to comply with the requirements of this section forfeits consideration by the Commission of any application for authorization or reauthorization.

§133-52-12. Notification: Appeals.

12.1. Once the Commission has received and verified the accuracy of information constituting any of the grounds for adverse action identified in this rule, the Commission shall notify the institution and its owner in writing of its intent to recommend denial, suspension, or revocation of reauthorization or other adverse action and the grounds for such recommendation.

12.1.a. The owner of the institution may, within 10 business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced by the Chancellor within 20 business days of such request at a location designated by the Chancellor.

12.1.b. The hearing shall be conducted by the Chancellor pursuant to the West Virginia Administrative Procedures Act, W. Va. Code § 29A-5-1, et seq.

12.1.c. The Chancellor may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.

12.1.d. If the owner or a representative of the institution does not request a hearing within the

requisite time period, the recommendation of the Chancellor shall be deemed unchallenged by the institution and reported to the Commission for final action.

12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by a preponderance of the evidence.

12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

12.4. The rules of privilege recognized by the law of this state shall be followed.

12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor and may cross-examine witnesses called by the Commission in support of the charges.

12.7. The hearing shall be open to the general public.

12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions, and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. All recorded materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

12.10. The Commission may call witnesses to testify in support of charges, may present such other evidence to support its position, and may cross-examine witnesses called by the institution in support of its position.

12.11. All parties shall have the right to offer opening and closing arguments.

12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor upon appropriate notice to all parties.

12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least 10 business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.

12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor.

12.15. At any time prior to the hearing or thereafter, the Chancellor may hold conferences for the

following purposes:

- 12.15.a. To dispose of procedural requests, pre-hearing motions, or similar matters;
- 12.15.b. To simplify or settle issues by consent of the parties; or
- 12.15.c. To provide for the informal disposition of the case by stipulation or agreement.

12.16. The Chancellor may cause such conferences to be held on the Commission's own motion or by the request of a party.

12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

12.18. Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code § 29A-5-3. Such orders shall be entered within 60 days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.

12.19. Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor and must be approved by a majority of the Commission by vote at a regular meeting before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or its attorney of record, if any, within 10 business days after entry by the Commission by personal service or by registered or certified mail.

12.20. The final order may suspend, withdraw, or revoke the authorization of the institution; place the institution on probation; order refunds to students; order forfeiture of the institution's surety bond.

12.21. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code § 29A-5-1, et seq.

12.22. Nothing in this rule precludes an institution's current or former students or current or former employees from pursuing any remedy at law or equity that may be available to them based on the institution's actions or failures to act in accordance with this rule or any other provision of applicable law.