

Hope Scholarship Board Meeting Minutes

322 70th Street, SE – 2nd Floor Conference Room
Charleston, WV 25304

October 12, 2022

The meeting of the Hope Scholarship Board was called to order by Treasurer Riley Moore, Chair, on Monday, October 12, 2022 at 2:10 pm after determination that a quorum of members was present through a silent roll call. Board members attending the meeting in person were: State Treasurer, Riley Moore, Chair; State Attorney General, Patrick Morrissey; State Superintendent of Schools Designee, Dustin Lambert; State Auditor's Designee, Anthony Woods; Parent Member, Jonathan "Zak" Ritchie; and Director of the Herbert Henderson Office of Minority Affairs, Jill Upson. Parent Representative, Charles Russell attended virtually via Microsoft Teams. The Chancellor of Higher Education's Designee, Brian Weingart and Parent Representative, Amanda Hoylman were absent.

The following West Virginia State Treasurer's Office (WVSTO) staff members attended the meeting in person: Steve Bohman, James Fuerhoff, Jared Hunt, Lindsay Marchio, Lyndsey Quinlan, Adam Shuemake, Michelle Storage, Amy Willard and Carly Williams. Sarah Canterbury attended the meeting virtually. Steven Travis of the West Virginia Attorney General's Office was also in attendance. Approximately 25 members of the public attended the meeting virtually.

The agenda for the meeting consisted of the following:

- I. Welcome – Introductions/Roll Call – Call to Order
- II. Approval of Minutes from the June 21, 2022 Meeting
- III. Hope Scholarship Program Legal Update
- IV. Consideration of Emergency Amendment to 112 CSR 18
- V. Consideration of Late Application Processes
- VI. Future Meetings
- VII. Adjournment

Approval of Minutes

The Chair indicated the first item on the agenda was the approval of the minutes of the June 21, 2022 meeting, which were distributed to the members prior to the meeting. The Chair asked if there were any additions or corrections to the minutes. Anthony Woods indicated that his name was missing on the list of attendees for the June 21, 2022 meeting. A motion to approve the minutes with the mentioned correction was made by Patrick Morrissey and seconded by Zak Ritchie. The Chair asked for discussion and there was none. The Chair polled the members and the motion to approve the minutes was adopted.

Hope Scholarship Program Legal Update

The Chair indicated next order of business before the Board was the Hope Scholarship Legal Update. The Chair recognized Board Counsel, Michelle Storage to give the update. Ms. Storage indicated that the Supreme Court of Appeals of WV heard oral arguments regarding the Hope Scholarship injunction on October 4, 2022. The Court issued a decision by Order on October 6, 2022 dissolving the injunction and reversing the Kanawha County Circuit Court's prior ruling. A detailed opinion from the Supreme Court will follow at a later date providing details of the ruling. However, the decision by Order has afforded the Board the opportunity to resume working on implementation of the program without further delay. The Board will proceed by considering action regarding the late application process and considering an emergency amendment to the rules located at 112 CSR 18, in order to resolve application and refund issues which mounted during the time we were on hold as a result of the injunction. At the conclusion of her report, Michelle Storage asked if Attorney General, Patrick Morrissey had anything he wished to add. Patrick Morrissey thanked everyone for their patience as the case went through the legal process and indicated his office was anxiously awaiting the full opinion from the Supreme Court. Jill Upson asked if there were any other pending lawsuits related to the Hope Scholarship Program. Michelle Storage indicated there is currently no pending litigation against the Hope Scholarship Program. Zak Ritchie thanked the Treasurer's Office and the Attorney General's Office for their work.

Consideration of Emergency Amendment to 112 CSR 18

The Chair indicated the next order of business on the agenda was the consideration of an emergency amendment to 112.CSR 18. The Chair recognized Legislative Director, James Fuerhoff and Deputy Treasurer of Savings Programs, Amy Willard to explain the proposed amendments.

James Fuerhoff provided a refresher on the history and current status of the Hope Scholarship legislative rules. He indicated that the Board put the Hope Scholarship rule out for public comment earlier this year on February 9, 2022. The Board received public comments and many of those were incorporated into what is called the agency approved rule that was filed on April 21, 2022. That is the version of the rule that the Legislature will review for its consideration. Additionally, the Legislative Rule Making Review Committee is set to meet at the end of November and Board staff will meet with representatives from that committee over the next month. It is likely that the Board will need to meet in November to consider recommended changes to the rules by the Legislature.

Mr. Fuerhoff then indicated that the proposed emergency amendment being considered today specifically relates to post-injunction implementation and is only necessary for the duration of the current 2022-2023 school year. If adopted, the provisions of the emergency amendment will remain in effect until the Legislature authorizes the promulgation of the rule next Spring. Once the Board final files the rule, the provisions of this emergency amendment will be superseded by the legislative version of the rule. To simplify, Mr. Fuerhoff indicated this emergency amendment provides the Board flexibility to make immediate changes to the rule in the interim without making permanent changes to the rule that are only needed for a temporary period of time.

Amy Willard then provided a detailed overview of the proposed emergency amendment. She indicated that the emergency amendment to the legislative rules would add a new section, Section 12, to address the disbursement of funds and eligibility issues following the 2022 injunction against the Hope Scholarship Program.

Section 12.1 adds definitions, summarized as follows:

- Full amount, which means the amount of funds that would have been disbursed to each Hope Scholarship account for students for the 2022-23 academic year if the injunction had not been issued.
- Injunction, which refers specifically to the injunction issued by Judge Tabit on July 6, 2022 and any other order or action affirming, upholding, modifying or continuing the circuit court order or otherwise preventing or delaying implementation of the Hope Scholarship Program.
- Prorated amount, which means the full amount of Hope funds less an amount prorated to account for the student's enrollment in a public school during the 2022-23 academic year. The proration will be based the number of instructional days the student was enrolled full-time in public school out of the 180 instructional days in the school year.

Section 12.2 sets forth that students who applied for the Hope Scholarship program prior to the issuance of the injunction will be eligible to participate in the Program during the 2022-23 academic year if the following criteria are met:

- A court of competent jurisdiction stays, lifts, vacates or overturns the injunction.
- The student's application was approved, or at the time the student's application was submitted to the Board, the student was eligible to participate in the Program (which is intended to address the pending applications and late application requests submitted up through the injunction).
- The student is still a resident of the State.
- The student is still under age 21.
- The student still has not completed a secondary school program.

Section 12.3 indicates that the Board will disburse the full amount of Hope funds to the student accounts of students meeting the criteria of section 12.2 of the rule if:

- The student is enrolled full-time in a nonpublic school and was enrolled in said school for the entire period the injunction was in place.
- The student is participating in an individualized instructional program and was participating in said program for the entire period the injunction was in place.

Section 12.4 indicates the Board will disburse a prorated amount of Hope Scholarship funds to the student accounts for students meeting the criteria from Section 12.2 if the student was enrolled full-time in public school for any period of time while the injunction was in place.

Section 12.5 indicates that participating schools may remit tuition payments made by parents with non-Hope Scholarship funds while the injunction was in place back to those families. Section 12.5.1 indicates that this remittance of non-Hope Scholarship funds to the families is not an impermissible sharing of Hope Scholarship funds and does not constitute a refund of Hope Scholarship funds.

Section 12.5.2 clarifies that a participating school may not accept Hope Scholarship funds and make a remittance back to families if the student did not ultimately attend the participating school since education service providers are only allowed to accept Hope funds for educational services actually rendered to students.

Section 12.6 indicates the Board may adopt procedures to approve and authorize reimbursement of Hope Scholarship funds to students meeting the criteria of Section 12.2 for the cost of qualifying expenses while the injunction was in place. The Board may authorize its Secretary to approve and authorize reimbursement of Hope Scholarship funds for the cost of qualifying expenses while the injunction was in place.

Section 12.7 indicates that students must comply with all generally applicable requirements of the Hope Scholarship Act and the rule, including but not limited to, withdrawing from public school prior to receiving any disbursement of Hope Scholarship funds. Students who wish to remain in public school for the remainder of the 2022-23 school year shall elect to decline the Hope Scholarship for the school year and must re-apply for the Hope Scholarship to be eligible for future school year.

Section 12.8 indicates that due to the programming delays to the online portal as a result of the injunction, the Board may disburse the Hope Scholarship funds in one payment no later than January 15, 2023 if needed instead of splitting into two installments as outlined in Section 7.3 of the rule.

Section 12.9 indicates that due to delays caused by the injunction, the Board may open the renewal application window for the 2023-24 school year during February 2023 instead of in accordance with the regular annual renewal window outlined in subsection 4.2.2 of the rule.

Upon the conclusion of Ms. Willard's explanation, the Chair asked if there were any questions. Jill Upson asked about Hope Scholarship students currently attending public school who wanted to withdraw a little later, such as at the semester. Amy Willard indicated that those students will be able to withdraw at the semester break and would receive a prorated amount of Hope Scholarship funding for the year. Zak Ritchie asked what will happen with Education Service Providers (ESPs) that were unable to complete sign-up in the portal. Amy Willard indicated that Board staff is working with the portal provider, and once the portal is operational, ESPs can continue that registration process. Dustin Lambert asked how information would be communicated to parents. Amy Willard said that the Hope Scholarship website will be updated and the Hope scholarship team will be communicating directly with families as well.

At the conclusion of the report, the Chair asked if there were any amendments to the emergency amendments for 112 CSR 18. None were heard. The Chair asked for a motion to adopt the emergency amendment and file it with the Secretary of State. Zak Ritchie made the motion and Patrick Morrissey seconded. Upon hearing no discussion, the Chair polled the members, and the motion was adopted.

Consideration of Late Application Processes

The Chair indicated that the next order of business on the agenda is the consideration of late application processes. The Chair recognized Deputy Treasurer of Savings Programs, Amy Willard to explain the recommended motion. Amy Willard indicated at the June 21, 2022 meeting, the Board heard a report from her indicating that as of June 20, 2022, we had received 190 requests to apply for the Hope Scholarship Program outside of the application window. After that report, the Board approved a motion

to allow eligible students that had missed the Hope Scholarship application deadline to apply for the program and then approved a motion to allow Hope Scholarship Board staff to review, approve or deny applications that are submitted after the application deadline for the 2022-23 school year. After the Board approved these motions at the June 21, 2022 meeting, staff reached out to the families who had submitted application requests to begin manually processing them – sending them the EMA application link, requesting missing information to make eligibility determinations, etc. In addition, new application requests continued to be submitted to Hope Scholarship staff who continued to process them until the injunction was issued by Judge Tabit on July 6, 2022. As of July 6, 2022, the Hope Scholarship had received approximately 260 application requests. When the injunction was issued, all processing of application requests was discontinued. Because staff had to stop all work on the Hope Scholarship Program due to the injunction and because the EMA portal was shut down during that time, staff still has a considerable amount of work to do for the late application requests already authorized by the Board. Much of the work on the late application requests is manual. This is on top of Board staff trying to assist the Program Manager with resolving the issues for the 200+ applications submitted on time that were still pending in the EMA portal as well as assisting with registration of the ESPs.

Ms. Willard indicated that due to all of the work that needs to be accomplished to get the Hope Scholarship Program back up and running and the considerable manual effort that will be required of Board staff to help resolve the late application requests and pending applications already submitted to the Board by the date of the injunction, it is the recommendation of Board staff that new application requests for the 2022-23 school year be suspended as of the date of the injunction except for those students who are newly eligible for the Program under the provisions of section 3.1.4.c of the legislative rules (which is the 45-day rule). This is essentially a recommendation to suspend application requests for the 2022-23 year for those families who were eligible and could have applied during the spring application window but failed to do so. This will allow Board staff to focus on the implementation issues needed to get the Hope Scholarship program completely up and running for the students and families already approved or in process. Ms. Willard indicated the Board can always reconsider the suspension of late applications for the 2022-23 year once the EMA system is fully functional and the backlog of pending and previously approved late applications is resolved.

At the conclusion of Ms. Willard's explanation of the recommended motion, the Chair asked if there were any questions. Patrick Morrissey asked about how the process would be different than a typical year and will the applications that were in progress at the time of the injunction be processed. Amy Willard indicated that applications in progress at the time of the injunction would be processed. She further indicated that in a normal year, late applications for individuals who were eligible during the application window would only be considered on a case-by-case basis and those applications would not be considered at all under the motion. There would be no difference for newly eligible students as they would be able to apply for the program. Patrick Morrissey then inquired if the Hope Scholarship staff have received many requests and calls regarding late applicants to the Program. Amy Willard indicated a small number of requests and calls were received about late applications after the injunction.

At the conclusion of questions, the Chair asked for a motion to suspend consideration of any new Hope Scholarship application requests for the duration of the 2022-2023 school year except those for newly eligible students as permitted under W.Va. CSR §112-18-3.1.4.c. of the board's emergency rule. Zak Ritchie made the motion and Jill Upson seconded. Upon hearing no discussion, the Chair polled the members, and the motion was adopted.

Future Meetings

The Chair indicated that the next order of business was to discuss future meetings. The Chair then indicated that the next meeting of the full Hope Scholarship Board will be announced later in accordance with the Open Meetings Act. No discussion was heard regarding future meetings.

Adjournment

The Chair asked if there was any other business to come before the Board. Hearing none, Patrick Morrissey made a motion to adjourn the meeting. Zak Ritchie seconded the motion. Upon hearing no discussion, the Chair polled the members and the motion to adjourn the meeting passed. The meeting was adjourned at 2:36 P.M.

Minutes prepared by Amy Willard & Carly Williams

Minutes approved by the Board on December 1, 2022



Riley Moore, Treasurer
Chair of Hope Scholarship Board