

Coordinating Board for Higher Education
Policy on Penalties for Institutions that Willfully Disobey or Disregard Board Policy

Approved by the Board February 7, 2008

I. Statutory Language

§ 173.005.2(10), RSMo, provides:

If any institution of higher education in this state, public or private, willfully fails or refuses to follow any lawful guideline, policy or procedure established or prescribed by the coordinating board, or knowingly deviates from any such guideline, or knowingly acts without coordinating board approval where such approval is required, or willfully fails to comply with any other lawful order of the coordinating board, the coordinating board may, after a public hearing, withhold or direct to be withheld from that institution any funds the disbursement of which is subject to the control of the coordinating board, or may remove the approval of the institution as an "approved institution" within the meaning of section 173.1102.

If any such public institution willfully disregards board policy, the commissioner of higher education may order such institution to remit a fine in an amount not to exceed one percent of the institution's current fiscal year state operating appropriation to the board. The board shall hold such funds until such time that the institution, as determined by the commissioner of higher education, corrects the violation, at which time the board shall refund such amount to the institution. If the commissioner determines that the institution has not redressed the violation within one year, the fine amount shall be deposited into the general revenue fund, unless the institution appeals such decision to the full coordinating board, which shall have the authority to make a binding and final decision, by means of a majority vote, regarding the matter. However, nothing in this section shall prevent any institution of higher education in this state from presenting additional budget requests or from explaining or further clarifying its budget requests to the governor or the general assembly[.]

II. Policy

Definitions and Acronyms

- A. ***Affected institution***: The institution potentially subject to the withholding of funds, the removal of designation as an "approved institution," or a fine.
- B. ***Approved institution***: An institution designated as "approved" within the meaning of § 173.1102, RSMo.

- C. CBHE: The Coordinating Board for Higher Education.
- D. CBHE policy: Any regulation promulgated by the CBHE; any policy adopted by the CBHE, the adoption of which shall be evidenced by inclusion in the *CBHE Public Policies Manual*; or an order of the CBHE issued in writing to the affected institution.
- E. Commissioner: The Commissioner of Higher Education or his/her designee.
- F. Institution: Any public or private institution of higher education located in Missouri.
- G. MDHE: The Missouri Department of Higher Education.

Process. The CBHE may withhold state appropriations that are subject to the direct control of the CBHE, remove an institution's designation as an "approved institution," or fine an institution that willfully disregards CBHE policy. The process for imposing those penalties is set forth below.

A. Withholding state appropriations or removing an institution's designation as an "approved institution"

1. Any institution that willfully fails or refuses to follow any CBHE policy or knowingly acts without CBHE approval where such approval is required by law or policy may be subject to one of the following penalties:
 - a. The CBHE may withhold or direct to be withheld from that institution any funds, or any portion of the funds, the disbursement of which is subject to the direct control of the CBHE. Such withholding shall be in effect until such time as the institution, as determined by the Commissioner or by the CBHE on appeal, corrects the violation.
 - b. The CBHE may remove that institution's designation as an "approved institution" within the meaning of § 173.1102, RSMo. The removal of such designation shall be in effect until such time that the institution, as determined by the Commissioner or by the CBHE on appeal, corrects the violation.
2. The penalties described above may only be imposed after a public hearing, the requirements of which are described below:
 - a. The affected institution must receive notice of the public hearing. Such notice shall be issued at least 30 calendar days before the date of the public hearing and shall be delivered by electronic mail to the president or chancellor of the affected institution. The notice shall advise the affected institution of the time, date, and place of the public hearing; the conduct allegedly giving the CBHE cause to impose penalty; and a statement that the affected institution shall have an opportunity to be heard at the public hearing.
 - b. The public hearing shall be an open meeting of the CBHE.
 - c. The public hearing may take place at a regularly scheduled CBHE meeting or at another time determined by MDHE staff. If the public hearing takes place at a

time other than during a regularly scheduled CBHE meeting, MDHE staff shall consult with representatives of the affected institution in setting the time, date, and place of the public hearing.

d. During the public hearing, the CBHE shall give the affected institution an opportunity to be heard; provided, however, that the CBHE may set reasonable time limits on the affected institution's presentation if it is necessary to do so.

e. The CBHE shall render a decision within a reasonable period of time after the public hearing.

f. The affected institution shall receive a written decision from the CBHE. The decision shall set forth the CBHE's conclusions, the factual grounds upon which the conclusions are based, the penalty imposed, and the actions the institution must take to correct the violation and cause the penalty to be removed.

3. If the affected institution believes that the violation *has been* corrected and the Commissioner determines that the violation *has not been* corrected, the affected institution may appeal the Commissioner's determination to the CBHE. The appeal before the CBHE shall be conducted pursuant to the requirements for a public hearing, set forth in section A.2. above. If the CBHE determines that the institution has corrected the violation, the CBHE shall direct the MDHE to restore the institution's designation as an "approved institution" or to release any funds withheld to the institution.

B. Fining institutions

1. The Commissioner may fine an institution that willfully disregards any CBHE policy up to 1% of the institution's current year state operating appropriation. The payment of such fine shall be ordered in writing or by electronic mail. The order shall also contain a description of the institution's actions that evidence and establish a willful disregard of CBHE policy and the actions the institution must take to correct the violation.
2. The institution may appeal the Commissioner's order to the CBHE. The appeal shall be in writing and shall set forth the rationale for the appeal. It shall be submitted in writing or by electronic mail to the Commissioner, who shall convey the appeal to the CBHE, within two weeks of the date the Commissioner's order was sent. The institution shall, however, remit the fine as required by the order at or before the time it sends its appeal to the Commissioner.
3. The institution shall remit the fine to the CBHE, which shall hold the fine until such time as the Commissioner determines that the institution has corrected the violation or until the time the fine is deposited in the state's general revenue fund. If the Commissioner determines that the institution has corrected the violation, the CBHE shall return the entire fine to the institution.
4. If, after a period of one year after the date the Commissioner orders the institution to pay the fine, the Commissioner determines that the institution has not corrected the

violation, the Commissioner shall provide the institution with notice in writing or by electronic mail that he/she will request that the CBHE deposit the fine into the state's general revenue fund no later than ten calendar days after the date of the notice.

5. The institution may appeal the Commissioner's determination that the violation has not been corrected, in which case the fine shall not be deposited into the state's general revenue fund until such time as the institution has had an opportunity to be heard by the CBHE.
 6. The appeal hearing before the CBHE shall be conducted pursuant to the requirements for a public hearing, set forth in section A.2. above.
 7. The CBHE may make a final and binding decision about the institution's appeal, provided that a majority of all CBHE members present during the public hearing vote and that a quorum is established, whether members participate in person or by electronic means.
 8. If the institution appeals and the CBHE determines that the institution has corrected the violation, the CBHE shall cause the fine to be returned to the institution as soon as may reasonably be accomplished.
 9. If the institution does not appeal or if the CBHE determines during or after the appeal hearing that the institution has not corrected the violation, the CBHE shall cause the fine to be deposited into the state's general revenue fund on the date specified by the Commissioner, or as soon thereafter as may reasonably be accomplished.
- C. Before an institution's actions are deemed "willful" or "knowing," the Commissioner must determine that the policy or requirement allegedly disregarded or otherwise not followed has been communicated in writing to the institution, is contained in the *CBHE's Public Policies Manual*, or is contained in Title 6 of the Code of State Regulations.**