



**WEST VIRGINIA
SECRETARY OF STATE**

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ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY

Education

TITLE NUMBER

126

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative Exempt

Yes

W. Va. Code §§29A-3B-1, et

SERIES NUMBER OF RULE BEING AMENDED 075

seq.: W. Va. Board of
Education v. Hechler, 180 W.
Va. 451; 376 S.E.2d 839
(1988)

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d 839
(1988)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE
EFFECTIVE DATE OF THIS RULE IS

Monday, July 16, 2012

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Charles K Heinlein -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 126-075



Rule Id: 8586



Document 23774

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**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 75
EDUCATION INNOVATION ZONES (3236)**

§126-75-1. General.

1.1. Scope. -- This legislative rule authorizes the West Virginia Board of Education (hereinafter WVBE) to designate Education Innovation Zones in schools, groups of schools and departments or subdivisions of a school or schools; establishes a plan review, approval and amendment process; authorizes exceptions to certain policies, rules, interpretations and statutes; provides for approval of the Innovation Zone plan by certain employees of a school; provides for revocation of designation and plan approval; requires annual report by the West Virginia Department of Education (hereinafter WVDE); designates the order in which applications must be considered; provides for the voluntary transfer of employees; authorizes teacher job postings that exceed certain qualifications and requirements; and provides that a state institution of higher education may establish a school designated as an Innovation Zone, that such school may not receive certain funds; provides the procedure in which a state institution of higher education may apply for and establish an Innovation Zone school; and provides for the approval mechanism for an Innovation Zone school established by a state institution of higher education by the county board and by the WVBE; establishes a separate category of Innovation Zones known as Local Dropout Prevention and Recovery Innovation Zones; to increase graduation rate and reduce number of dropouts; provide a testing ground for innovative graduation programs, incentives, and approaches; provide schools and communities with opportunities for greater collaboration to plan and implement systemic approaches for increasing graduation rate and lessen dropout rate; provide information regarding the effects of specific innovations, collaborations, and policies; document educational strategies that increase graduation rates, prevent dropouts and enhance student success; establishes a separate category of Innovation Zones known as School System Collaborative Innovation Zone by adding thereto a new section, in accordance with the provisions in W. Va. Code §18-5B-12, relating to allowing flexibility within county school systems; and authorizing the State Board of Education to select a county school system to serve as a School System Collaborative Innovation Zone.

1.2. Authority. -- West Virginia Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-5B-1, 18-5B-2, 18-5B-3, 18-5B-4, 18-5B-5, 18-5B-6, 18-5B-7, 18-5B-8, 18-5B-9, 18-5B-10, 18-5B-11 and 18-5B-12.

1.3. Filing Date. -- June 15, 2012.

1.4. Effective Date. -- July 16, 2012.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR75, West Virginia Board of Education Policy 3236, Education Innovation Zones, filed September 9, 2011, and effective October 11, 2011.

§126-75-2. Purpose.

2.1. The purpose of this WVBE policy is to provide guidelines for implementation of Education Innovation Zones, Local Dropout Prevention and Recovery Innovation Zones and a School System Collaborative Innovation Zone to improve educational performance in a manner that provides greater flexibility from policy and law for principals and teachers to meet the needs of a diverse population of students. This WVBE policy will create the opportunity for information regarding the effects of specific innovative educational strategies on student achievement, dropout and graduation rates and to provide more public school accountability for student achievement and graduation rates as measured by the state assessment programs, local assessment processes and graduation rate and dropout rate calculations as identified by the schools and the WVDE. The School System Collaborative Innovation Zone county, working with partnerships built among educators, service personnel, parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel and civic leaders, will create the opportunity for information sharing regarding the effects of specific innovative educational strategies on a school system that is facing atypical challenges due to external circumstances and events.

§126-75-3. Eligibility.

3.1. Applicants for an Innovation Zone may include: 1) a school and groups of schools; 2) a group of schools seeking designation across the same subdivision or department of the schools; or 3) a school seeking designation of a subdivision or a department.

3.2. Applicants for a Local Solution Dropout Prevention and Recovery Innovation Zone may include: 1) a high school; 2) a group of schools comprised of a high school and any of the elementary and middle schools whose students will attend the high school; or 3) a school district whose graduation rate in the year in which the application is made is less than ninety percent based upon the latest school year data published by the Department of Education.

3.3. A state institution of higher education may establish a new Innovation Zone school subject to the regulations provided in W. Va. Code §18-5B-9.

3.3.a. The school will be under the jurisdiction of the state institution of higher education.

3.3.b. The county board with jurisdiction over the school district in which the new school is planned to be located must approve the establishment of the new Innovation Zone school.

3.3.c. The state institution of higher education must enter into cooperative agreements with the county board or county boards whose students attend the new Innovation Zone school. The agreements shall include at least required reporting on student attendance, academic progress and any other matters relating to the administration, operation and support of the school agreed to by institution and the board or boards.

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3.3.d. Students attending the school shall be enrolled in a school in their county of residence subject to the policies of the county. The students may participate in extracurricular and co-curricular activities at the county school in which they are enrolled and, subject to the cooperative agreement with the state institution of higher education, participate in curricular activities at the county school in which they are enrolled.

3.3.e. No funds for school Innovation Zones pursuant to W. Va. Code §18-5B-9 may be used for a state institution of higher education to establish a new Innovation Zone school.

3.3.f. A school established in accordance with this section may not be funded with moneys appropriated by the Legislature to fund the Innovation Zone program or from state or county moneys that result from the school aid formula.

3.3.g. The process, timelines and selection criteria for a state institution of higher education to establish a new Innovation Zone school shall be the same as outlined in this rule for all applicants.

§126-75-4. Application Process.

4.1. Applicants must submit an application and plan outlining their innovation zone focus to WVDE. The application and plan guidelines are available through the WVDE Office of School Improvement.

4.2. Application and plans must follow the established timelines, as well as all regulations indicated in law and policy; secure the necessary support and include all the components outlined in WVDE guidance documents.

4.3. Application and plans must include documentation of approval by eighty percent of the eligible employees affected by the Innovation Zone proposal, in accordance with §126-75-5.

4.4. Application and plans must fully describe the objectives, outcomes, timelines, persons responsible and budget necessary to implement the project design.

4.5. Application and plans must include professional development that supports the planning, implementation, and monitoring of the Innovation Zone.

4.6. The Local Solution Dropout Prevention and Recovery Zone application and plans must include a description of the dropout prevention and recovery strategies planned for implementation and for building community awareness of the high school dropout problem.

4.6.a. The application and plan must provide evidence that various stakeholder groups are involved as partners, collaboratively working with the applicant to increase graduation rates and decrease dropout rates.

4.6.b. The application and plan must include implementation of the statewide system of easily identifiable early warning indicators of students at risk of not completing high school.

4.7. The focus of the application and plan must be supported by data, meeting the specific needs of the student population and an innovative idea that has not been previously funded through this policy.

4.8. The focus of the application and plan may include a request for an exception of any state or county policy, rule, statute, or interpretation except from an assessment program administered by the WVDE; any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; W. Va. Code §§18A-2-7; 18A-4-7A, 18A-4-7B, 18A-4-8 and 18A-4-8B, except as provided in W. Va. Code §18-5B-8 or any other information the WVBE requires.

4.9. The focus should include strategies that fully prepare students at each grade level and encourage students to stay in school, be engaged in the curriculum, and have a plan for entering the workforce, post secondary training or education.

§126-75-5. Rights of Employees.

5.1. An employee regularly employed at a school applying for or designated as an Innovation Zone whose job duties may be affected by implementation of the Innovation Zone or proposed application and plan may request a transfer to another school in the school district and the county board shall make every reasonable effort to accommodate the transfer.

5.2. If the application and plan includes a job posting that exceeds the qualification provided in section seven-a, article four, chapter eighteen-a of W. Va. Code, teachers in the county must approve the job posting by a majority vote in accordance with W. Va. Code §18-5B-8.

5.3. The application and plan shall be approved by eligible employees that are affected by the Innovation Zone plan prior to submission of the plan to the county board of education in accordance with the regulations in W. Va. Code §18-5B-6:

5.3.a. An employee shall be eligible to vote in accordance with the provisions of this section if: 1) The employee is regularly employed at the school; and 2) the employee's primary job duties will be affected by the implementation of the Innovation Zone plan.

5.3.b. A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council shall call the meeting required to vote on approval of the Innovation Zone plan.

5.3.c. The panel shall determine which employees are eligible to vote in accordance with the provisions in W. Va. Code §18-5B-6, and shall conduct the votes and certify the results to the principal, the county superintendent and the president of the county board.

5.3.d. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each

employee eligible to vote who cannot attend the meeting to vote.

5.3.e. A secret ballot vote shall be conducted at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section to determine the level of employee commitment for approval of an Innovation Zone plan.

5.3.f. At least eighty percent of the employees who are eligible to vote in accordance with this section must vote to approve the school's Innovation Zone plan.

5.3.g. The application and plan shall be approved by eighty percent vote of the affected school employees and documentation of the same shall be submitted to the county superintendent and board for review.

§126-75-6. Evaluation Criteria/Approval Process.

6.1. Innovation Zones will be determined by Innovation Zone Selection Committee (hereinafter Selection Committee) (§126-75-8) based on submission and approval of the application and plan according to §126-75-4.

6.2. The Selection Committee will evaluate the application and plan based on development of the objectives, outcomes, timelines, persons responsible and budget necessary to implement the project design.

6.3. Grants will be awarded to the approved application and plans excluding the School System Collaboration Innovation Zone. Funding for the grant will be on a pro-rata basis with grants awarded, to the extent practicable, across geographic areas of the state, programmatic levels and in proportion to the number of teachers impacted by the innovation zone.

6.4. The Selection Committee shall recommend to the WVBE those applicants who have a fully developed application and plan for the Innovation Zone/ Local Solution Dropout Prevention and Recovery Zone and have met all requirements in this policy and W. Va. Code §18-5B-6 and §18-5B-11.

6.4.a. If an application and plan is disapproved, the WVDE shall communicate the reasons for the disapproval to the applicant along with recommendations for improving the plan.

6.4.b. The applicant may amend and resubmit the plan to the Selection Committee the following year.

§126-75-7. Progress Reviews/Annual Reports.

7.1. The WVDE shall at least annually review the progress of the Innovation Zone and provide a report to the WVBE and the Legislative Oversight Committee on Education Accountability.

7.2. Following the annual review/report, if the WVDE determines that adequate progress has

not been made, a report identifying areas of concern shall be submitted to the Innovation Zone.

7.2.a. The WVDE may conduct an additional review within six months of submitting the report.

7.2.b. Within this review, if the WVDE determines that the Innovation Zone has not made adequate progress, the WVBE may revoke the designation as an Innovation Zone.

§126-75-8. Innovation Zone Selection Committee Membership and Responsibilities.

8.1. The Selection Committee members shall include the following members: two WVBE members selected by the WVBE President, the State Superintendent of Schools and/or designee, one representative of each state teacher organization, one representative of an institution of higher education that has a state-approved educator preparation program, one county superintendent, one building principal and one teacher selected by the State Superintendent, one representative of a community/business organization jointly selected by the WVBE President and State Superintendent, and WVDE staff as ex-officio/resource persons.

8.2. Members will serve five year terms.

8.3. The Selection Committee shall review plans, including WVDE staff recommendations, based on a review of applications that meet the required criteria.

8.4. The Selection Committee shall recommend applications to the WVBE for approval.

§126-75-9. School System Collaborative Innovation Zone.

9.1. Eligibility.

9.1.a. Applicants for a School System Collaborative Innovation Zone must be a county school system under state board control and willing to test innovations that could be replicated in other school systems facing similar circumstances across the state, nation and world.

9.1.b. If the eligible entity specified in accordance with the provisions in W. Va. Code §18-5B-12 does not meet the requirements or submission timeline, the state board may accept applications from other county boards under state board control.

9.2. Process for Designation.

9.2.a. The school system in collaboration with its public-private partnership shall conduct public town hall meetings in at least two schools in the county within ten days of each other for the purpose of soliciting input from those in attendance on the challenges affecting the quality of education in the county and the potential strategies and priorities for addressing them.

9.2.b. Within fifteen days after the town hall meetings, the county superintendent shall hold a meeting for the purpose of reviewing the input gathered at the public town hall meetings

and developing the school system collaborative innovation zone plan. The meeting shall include the principals employed within the county, the chairs of the faculty senates of each school in the county, employee organization representatives, a school service person from each work-site, parents and other stakeholders.

9.2.c. The application/plan will include a project summary, vision and needs assessment, overarching goals, and letters of commitment from the various stakeholders. The plan will serve as the basis for the innovation zone activities of the school system and as the vision for the school improvement goals it will work to accomplish in collaboration with its school and community partners.

9.2.d. The plan is not a limit on the normal school improvement activities that all school systems are expected to pursue, nor is it intended as a restriction on the ability of the school system or its schools to pursue other innovative strategies in accordance with the other provisions of this article, specifically the designation as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance with 18-5B-11.

9.2.e. The county superintendent shall hold a meeting of all regular school employees 15 days after the meeting referenced in 9.2.b. for the purpose of educating the employees about the plan and to provide the employees an opportunity to examine and discuss the application/plan.

9.2.f. The county superintendent shall direct a vote of all regularly employed school employees in the county to determine the level of support for the application/plan. The vote shall be completed within fifteen days after the meeting referenced in 9.2.e. The vote shall be by secret ballot administered by the panels created in section 9.5.e of this rule and shall be administered in accordance with that subsection. For the vote to be valid, ballots must be cast by at least fifty percent of all regularly employed in the county. The application/plan is approved if at least two-thirds of the ballots cast by the employees are for approval of the application/plan.

9.2.g. Applicants must submit their application/plan to the Innovation Zone Selection Committee referenced in section 8 and follow the guidelines in 8.3 and 8.4.

9.3. Effect of Designation.

9.3.a. The designation of a county board as a school system collaborative innovation zone shall be for a period of five years, during which the school system may submit multiple individual requests for exceptions to permit implementation of different strategies contemplated in the plan as they are developed. Each request for an exception shall be submitted following the normal Innovation Zone waiver process.

9.3.b. The designation is an additional tool for the school system, in collaboration with community and business partners, to plan and implement new approaches to improve the performance and progress of the students, schools and system to achieve full approval status of the school system at the earliest possible date.

9.3.c. The WVBE may rescind the state of emergency and take-over status of the school

system as soon as the requisite conditions are met as provided in section five, article two-e of this chapter, notwithstanding the designation.

9.3.d. If a school system that has been designated as a school system collaborative innovation zone is subsequently issued a school system approval status that would make it ineligible for the designation, the designation shall remain in effect for the remainder of the designation as provided in this section.

9.3.e. A county board designated as a school system collaborative innovation zone may revise its plan and resubmit it to the state board for approval after conducting the vote pursuant to section 9.5 of this rule and complying with all other applicable plan requirements except for holding the public town hall meetings.

9.3.f. Upon the request of the school system, the state board may extend the school system's designation for an additional two years if it has outstanding items in its school system collaborative innovation zone plan that it still wants to pursue. No additional items may be pursued during the extension.

9.3.g. The expiration of the designation does not negate any exceptions to statutes, policies, rules or interpretations granted to the school system, unless and until specifically revoked, repealed or modified by the state board or by the Legislature, as applicable.

9.4. Request for Exceptions.

9.4.a. A school system designated as a School System Collaboration may request an exception of any state policy, rule, statute, or interpretation except from an assessment program administered by the WVDE; any provision of law or policy required by the Elementary and Secondary Education Act of 2001, Public Law No. 107-110 or other federal law; W. Va. Code §§18A-2-2, 18A-2-7; 18A-4-7A, 18A-4-7B, 18A-4-8 and 18A-4-8B, except as provided in W. Va. Code §18-5B-8.

9.4.b. A request for an exception to a statute, policy, rule, or interpretation must contain the following information: a description of the program or initiative the school system intends to implement as an innovative strategy to improve student achievement if the request is approved by the state board; an explanation of the specific exception to a statute, policy, rule or interpretation, in the singular or plural, that the school system has identified as prohibiting or constraining the implementation of the program or initiative and why the exception is necessary; an explanation of how the program or initiative furthers the activities contemplated in the school system collaborative innovation zone plan; and a certification by the county superintendent that the request for an exception was approved by a vote of the eligible employees.

9.4.c. A request for an exception to a state policy, rule, statute or interpretation must be approved by a vote of the affected employees. Requests for exceptions may be submitted at any point during the five year designation and the school system may request any number of exceptions.

9.4.d. The county superintendent shall direct a vote of all regularly employed school employees in the county whose job duties may be affected by the implementation of an exception to determine the level of support for requesting the exception. The vote shall be by secret ballot administered by the panels as provided in section 9.5.e of this rule. For the vote to be valid, ballots must be cast by at least fifty percent of the affected employees eligible to vote. The request for an exception is approved if at least two-thirds of the ballots cast by the employees are for approval of the request.

9.5. Rights of Employees.

9.5.a. All regularly employed employees of the county have the right and are eligible to vote to approve or disapprove the submission of an application/plan for a School System Collaborative Innovation Zone to the State Board. The vote shall be conducted as provided in section 9.2.f of this rule and the application/plan may not be submitted to the State Board unless approved in accordance with that section.

9.5.b. All regularly employed employees of the county whose job duties may be affected by the implementation of an exception to a state policy, rule interpretation or statute have the right and are eligible to vote to approve or disapprove the submission of a request for the exception to the State Board. The vote shall be conducted as provided in section 9.4.d of this rule and the request may not be submitted to the State Board unless approved in accordance with that section.

9.5.c. An employee regularly employed at a school(s) applying for an exception to a statute, policy, rule or interpretation whose job duties may be affected by implementation of the exception may request a transfer to another school in the school district and the county board shall make every reasonable effort to accommodate the transfer.

9.5.d. If the implementation of a program consistent with the School System Collaboration Zone requires a job posting that exceeds the qualifications as provided in section seven-a, article four, chapter eighteen-a of W. Va. Code, teachers in the county must approve the job posting by a majority vote in accordance with W. Va. Code §18-5B-8.

9.5.e. A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council shall call the meeting required to vote on approval of the Innovation Zone plan. The panel shall conduct the votes and certify the results to the principal, the county superintendent and the president of the county board. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote. A secret ballot vote shall be conducted at a special meeting of all employees regularly employed who are eligible to vote in accordance with this section to determine the level of employee commitment for the approval of a School System Collaborative Innovation Zone application/plan, an amendment to the plan, or a request for an exception to a state policy, rule, interpretation or statute to implement a strategy under the plan, as applicable. At least two-thirds of the employees who are eligible and vote must vote to

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approve and fifty percent of the eligible employees must have voted.

§126-75-10. Severability.

10.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule.