

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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3/14/2013 10:21:56 AM

FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 1)

AGENCY

Education

RULE TYPE Legislative Exempt

AMENDMENT TO EXISTING RULE Yes TITLE-SERIES

126-

RULE NAME Rules of Procedure for Administrative Hearings and Appeals (1340)

004

CITE AUTHORITY 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)

COMMENTS LIMITED TO

Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS Monday, April 15, 2013 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO Charles K. Heinlein, Deputy Superintendent West Virginia Department of Education Capitol Building 6, Room 360 1900 Kanawha Boulevard, East Charleston, West Virginia 25305-0330

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: 126-004



Rule Id: 8966





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WEST VIRGISIA SECRETARY OF STATE

FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 2)

AGENCY

Education

RULE TYPE

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AMENDMENT TO EXISTING RULE Yes TITLE-SERIES

126-

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004

CITE AUTHORITY 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)

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Prior to June 2012, the West Virginia Department of Education conducted administrative licensure suspension/revocation proceedings for school bus operators before a designee of the State Superintendent of Schools under Policy 1340. The 2012 Legislature enacted a statute creating a School Bus Operator License Review Panel to hear such cases, codified at W. Va. Code §18A-4-8e. The statute delegated to the West Virginia Board of Education the responsibility to develop the composition of the Panel and its operating procedures. Policy 1340 is beind amended to include the School Bus Operator License Review Panel and amends certain procedural provisions to be consistent with long-standing practices of the Licensure Appeal Panel and Professional Practice Panel.

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: 126-004



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OFFICE OF WEST VIRGISIA SECRETARY OF STATE

FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY Education

RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES

RULE NAME Rules of Procedure for Administrative Hearings and Appeals (1340)

004

126-

CITE AUTHORITY 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)

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

This rule will have no financial impact on the costs or revenues of the state government. However its companion rule, Policy 4336, West Virginia School Bus Transportation Policy and Procedures Manual does have a fiscal note attached and the implementation of Policy 4336 occurs in this policy.

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: 126-004



Rule Id: 8966





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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY Education

RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes TITLE-SERIES

RULE NAME Rules of Procedure for Administrative Hearings and Appeals (1340)

004

126-

CITE AUTHORITY 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)

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	Ø	9	9
PERSONAL SERVICES	9	Ø	Ø
CURRENT EXPENSES	Ø	0	9
REPAIRS AND ALTERATIONS	9	9	Ø
ASSETS	9	0	9
OTHER	Ø	Ø	Ø
ESTIMATED TOTAL REVENUES	Ø	8	Ø

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: 126-004





Document: 24658

Rule Id: 8966



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WEST VIRGISIA SECRETARY OF STATE

FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY

Education

RULE TYPE Legislative Exempt

AMENDMENT TO EXISTING RULE Yes TITLE-SERIES

126-

RULE NAME Rules of Procedure for Administrative Hearings and Appeals (1340)

004

CITE AUTHORITY 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)

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

None

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: 126-004





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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY

Education

RULE TYPE

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004

CITE AUTHORITY 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)

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

This rule will have no financial impact on the costs or revenues of the state government. However its companion rule, Policy 4336, West Virginia School Bus Transportation Policy and Procedures Manual does have a fiscal note attached and the implementation of Policy 4336 occurs in this policy.

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

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: 126-004



Rule Id: 8966



EXECUTIVE SUMMARY WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title: Policy 1340, Rules of Procedure for Administrative Hearings and Appeals.

Background: Prior to June 2012, the West Virginia Department of Education conducted administrative licensure suspension/revocation proceedings for school bus operators before a designee of the State Superintendent of Schools under Policy 1340. The 2012 Legislature enacted a statute creating a School Bus Operator License Review Panel to hear such cases, codified at W. Va. Code § 18A-4-8e. The statute delegated to the West Virginia Board of Education the responsibility to develop the composition of the Panel and its operating procedures.

Proposal: Amend Policy 1340 to include the School Bus Operator License Review Panel in the section of the Policy currently devoted to teacher license denial, suspension and revocation, the Licensure Appeal Panel and the Professional Practice Panel and amend certain procedural provisions to be consistent with long-standing practice by the LAP and PPP.

Impact: Adoption of Amended Policy 1340 would allow licensure proceedings to move forward when warranted.

Stakeholders Involved in the Edit of Policy 1340

West Virginia School Service Personnel Association

West Virginia Education Association

American Federation of Teachers-West Virginia

West Virginia Division of Highways

TITLE 126 PROCEDURAL RULE BOARD OF EDUCATION SERIES 4

RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS AND APPEALS (1340)

§126-4-1. General.

- 1.<u>1.</u> Scope. The "Rules of Procedure for Administrative Hearings and Appeals" are promulgated to assure procedural due process and expeditious processing of administrative proceedings before the State Superintendent of Schools. Nothing herein should be interpreted to give rise to an action on the part of any county school personnel; all remedies which are allowable by a county board of education or county school superintendent should be exhausted before appealing to the State Superintendent to hear a controversy. Employee grievances are governed by the provisions of W. Va. Code §18-29-1, et seq.
- 1.2. Authority. W. Va. Const., Article XII, §2; W. Va. Code §§6-9A-1 et seq., 18-2-5, 18-3-4, 18A-3-2a, and 18A-3-6 and 18A-4-8e.
 - 1.3. Filing Date. June 7, 2002.
 - 1.4. Effective Date. July 7, 2002. July 1, 2013.
- 1.5. Repeal of Former Rule. This procedural rule repeals and replaces amends Legislative Rule W. Va. 126CSR4 West Virginia Board of Education Policy 1340 "Rules of Procedure for Administrative Hearings and Appeals" filed February 15, 2002 July 7, 2002 and effective March 17, 2002 July 7, 2002.

§126-4-2. Foreword.

2.1. This policy governs the disposition of all administrative proceedings as well as the hearing of appeals and the adjudication of controversies and disputes arising under school laws by the State Superintendent of Schools, including citizens' appeals under State Board 126CSR188 West Virginia Board of Education Policy 7211, Appeals Procedure for Citizens.

§126-4-3. General Rules.

3.1. Definition of "Designee." As used in these rules, "Designee" shall mean that employee of the West Virginia Department of Education (WVDE) designated by the Superintendent to hear and determine issues pursuant to the terms and conditions of this policy.

- 3.2. Definition of "Superintendent." As used in these rules, unless a different meaning appears from the context, "Superintendent" shall mean the State Superintendent of Schools.
- 3.3. Definition of "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher or school bus operator to the extent pertinent.
- 3.4. All parties shall receive notice at least ten (10) days prior to the hearing. The notice of hearing shall include:
 - 3.4.1a. the date, time and place of the hearing,
 - 3.4.2b. a concise statement of the purpose,
- 3.4.3c. mention that either the Superintendent or a designee of the Superintendent shall conduct the hearing.
 - 3.5. A copy of this policy shall be provided to the parties to the hearing.
- 3.6. Appearance Pro Se. Any person may either appear in person or be represented by a representative or an attorney at law admitted and authorized to practice in this State.
- 3.7. Authority of Superintendent. The Superintendent shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the Superintendent's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters. The authority of the Superintendent shall extend to his/her designee in all cases arising under this policy when the matter is heard by the designee at the request of the Superintendent.
- 3.7.4a. The Superintendent may also call witnesses and question them. The Superintendent may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.
- 3.7.2b. A hearing may be adjourned from one day to another or to another place either by announcement by the Superintendent at the hearing or by appropriate notice.
- 3.7.3c. The Superintendent may grant a continuance for good cause shown by the requesting party or upon his/her own motion.

- 3.8. Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the Superintendent desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The Superintendent may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the Superintendent's knowledge. Parties may be given a fair opportunity to refute the facts so noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted or to a determination of appropriate relief.
- 3.9. Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body whose action is called into question before the Superintendent, either party may, if at least ten (10) days' notice of intention to do so has been given to opposing parties or counsel, offer the transcript of testimony of any witness or witnesses named in said notice in lieu of producing said witness or witnesses at the hearing.
- 3.10. Briefs and Oral Argument. All parties shall have the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the Superintendent shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the Superintendent.
- 3.11. Failure to Cooperate. The Superintendent, on his or her own initiative or at the request of the designee, may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the Superintendent or the designee, in the course of a proceeding.
- 3.12. Written Decision. Every determination shall be embodied in a written decision which shall contain both findings of fact and conclusions of law and an appropriate_recommended disposition order. Such decisions shall be issued by the Superintendent's designee. Upon receipt of the recommended order with findings and conclusions from such designee, the Superintendent shall review the same along with the record and issue an order adopting the findings, conclusions, and/or recommendations of the designee; rejecting the findings, conclusions and/or recommendations of the designee; or remanding the matter back to the designee with instructions for further evidence or findings, conclusions and/or recommendations. When the case is heard directly by the Superintendent, the Superintendent shall issue both a written decision, which shall set forth findings of fact and conclusions of law, and an appropriate order. Said orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record within thirty (30) days following the Superintendent's receipt of any recommendation from his or her designee or within thirty (30) days following the hearing when heard directly by the Superintendent.

- 3.13. Waiving of Rules. Any of the provisions of these rules relating to the presentation of his/her case or argument may be waived by any party or his/her attorney.
 - 3.14. Hearings shall be recorded by electronic means or by a court reporter.

§126-4-4. Rules for Hearings on <u>Teacher and School Bus Operator</u> Certification Suspension/Revocation/Recall/Denial for Cause.

- 4.1. Definitions of terms used in this section.
- 4.1.4<u>a</u>. "Hearing Officer." As used in these rules, unless a different meaning appears from the context, "Hearing Officer" shall mean the State Superintendent of Schools, the Professional Practice Panel, the Licensure Appeal Panel, or a WVDE employee designated by the Superintendent to hear and determine issues of teaching certificate suspension and/or revocation and/or denial for cause <u>or the School Bus Operator Review Panel</u>, which hears and makes recommended decisions regarding school bus operator certificate suspension, revocation, recall or denial for cause.
- 4.1.2b. "Teacher." As used in these rules, the word "Teacher" (and its derivatives) shall mean any person certified or otherwise professionally licensed by the Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education or pursuant to statute, including but not limited to administrators, professionals, paraprofessionals, coaches and holders of service certificates.
- 4.1.3c. "Teacher Applicant." As used in these rules, the word term "Teacher Applicant" (and its derivatives) shall mean any person applying for a teacher license issued by the Superintendent pursuant to policy, rule or regulation of the West Virginia Board of Education or pursuant to statute.
- 4.1.4<u>d</u>. "School Bus Operator Applicant." As used in these rules, the term "School Bus Operator Applicant" (and its derivatives) shall mean any person on whose behalf a county board of education or other public institution has submitted a request for certification to operate a school bus to the Superintendent pursuant to policy, rule or regulation of the West Virginia Board of Education or pursuant to statute.
- 4.1.4e. "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher or school bus operator to the extent pertinent.
- 4.1.5f. "Suspension." "Suspension", as used in these rules, shall mean a temporary revocation imposed for a fixed and definite period of time. After a period of suspension has expired, the affected individual must reapply for licensure or certification.

- 4.1.6g. "Professional Practice Panel." "Professional Practice Panel" shall mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding the revocation, suspension, recall and imposition of conditions for cause reinstatement of a teacher's license, pursuant to W. Va. Code §18A-3-6 and 126CSR154 West Virginia Board of Education Policy 5050, West Virginia Commission for Professional Teaching Standards (Policy 5050).
- 4.1.7<u>h.</u> "Licensure Appeal Panel." "Licensure Appeal Panel" shall mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding denial for cause of a teacher's license, pursuant to <u>W. Va. Code §§18A-3-1(i), 18A-3-2a and 18A-3-6, and West Virginia Board of Education Policy 5050.</u>
- 4.1.i. "School Bus Operator Review Panel." "School Bus Operator Review Panel" shall mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding denial for cause, suspension, revocation or recall of a school bus operator certificate, pursuant to W. Va. Code §18A-4-8e and 126CSR92 West Virginia Board of Education Policy 4336, West Virginia School Bus Transportation Policy and Procedures Manual (Policy 4336).
- 4.2. Grounds for Revocation, or Suspension and Imposition of Reinstatement Conditions on of Teaching Certificates. The Superintendent may, after ten (10) days' notice and upon proper evidence, revoke, or suspend or impose other conditions on the certificate(s) of any teacher for drunkenness intemperance, untruthfulness, cruelty or immorality, the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student, or for using fraudulent, unapproved or insufficient credit to obtain the certificates. or for any physical, mental or moral defect which would render him/her unfit for the proper performance of his or her duties, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit; or for any other cause which would have justified the withholding of a certificate when the same was issued. (W. Va. Code §§18A-3-2a, 18A-3-6)
- 4.3. Grounds for Denial of <u>Teaching</u> Licensure for Cause. A <u>teaching</u> certificate shall not be issued to any person who is not of good moral character and physically, mentally and emotionally qualified to perform the duties for which the certification would be granted or for any other cause which would justify the revocation or suspension of certification. (W. Va. Code §§18A-3-1(i), 18A-3-2a, 18A-3-6)
- 4.4. Grounds for Revocation or Suspension and Imposition of Reinstatement Conditions on School Bus Operator's Certificate. The Superintendent may, after ten (10) days' notice and upon proper evidence, suspend, revoke or refuse to renew the certification for cause or impose any conditions upon the certification of any school bus operator for intemperance, untruthfulness, cruelty, immorality, conviction of a felony charge, conviction of any charge involving sexual misconduct with a minor or a student, or just and sufficient cause for revocation specified in Section 19.1 of Policy 4336. (W. Va. Code §18A-4-8e(4))

- 4.5. Grounds for Denial of School Bus Operators Licensure for Cause. The Superintendent may refuse to certify a candidate for school bus operator who is not of good moral character and is not physically, mentally and emotionally qualified to perform the duties of school bus operator safely and efficiently, including just and sufficient cause specified in Section 15.3 of Policy 4336.
- 4.4<u>6</u>. Duty of County Superintendent. It shall be the duty of any county superintendent who knows of any immorality or neglect of duty conduct on the part of any teacher, including student teachers, or school bus operators for which a certificate may be denied, revoked, suspended or recalled, to report the same, together with all the facts and evidence, to the Superintendent for such action as maybe proper. In the case of a student teacher, the county superintendent must also send the report to the appropriate teacher preparation institution. Failure to report such information, if willful, may be grounds for revocation of the certificate of the county superintendent.
- 4.57. Recalling Certificates for Correction. If a <u>teaching or school bus operator</u> certificate has been granted through an error, oversight or misinformation, the Superintendent shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and State West Virginia Board of Education Ppolicy.
- 4.68. Denial for Cause Proceedings. Denial for cause proceedings shall be conducted before the Hearing Officer. Upon receipt of a notice of recommendation of denial for cause of a teaching application from the WVDE Office of Professional Preparation or of a school bus operator application from the WVDE Office of Transportation, from the The the applicant may submit a written request for an appeal hearing within thirty (30) days of receipt. notification of a recommendation of a denial for cause from the Office of Professional Preparation. If no such hearing request is timely received, the application may be denied for cause by the Superintendent. If an appeal hearing request is received, the matter will be scheduled for a hearing before the appropriate Panel. applicant shall receive notice ten (10) days prior to the hearing.
- 4.79. <u>Notice of Teaching and School Bus Operator Certificate Denial,</u> Revocation, and Suspension and Recall Proceedings; Notice. Teaching and school bus operator certificate denial, revocation, suspension or recall proceedings shall be conducted before the appropriate Hearing Officer as set forth in Section 4.1.a. The teacher or school bus operator shall receive notice ten (10) days prior to the hearing.

4.79.a. The notice shall include:

- 4.79.1.a.1. the date, time and place of the hearing,
- 4.79.1.ba.2. a concise statement of the charges or reasons for denial,

- 4.79.1.ca.3. indicate that the Superintendent or his/her designee specify which Hearing Officer will shall conduct the hearing, and
- 4.9.a.4. the possible actions to be taken against the certificate, when applicable.
- 4.9.b. Upon timely request by the teacher <u>or school bus operator</u>, a more definite statement of the charges shall be received by <u>provided to</u> the teacher <u>or school bus operator</u>. at least ten (10) days prior to the hearing.
- 4.79.2c. Appearance Pro Se. Any person may either appear in person with or without a representative or an attorney at law admitted and authorized to practice in this State.
- 4.79.3d. A quorum shall be required, which is a majority of the Panel hearing the matter. A majority of Professional Practice Panel members shall constitute a quorum.
- 4.810. General Hearing Procedures. on Teaching Certification. A teaching certificate suspension, revocation, or denial for cause hearing is a continuation of the Superintendent's investigation into whether a professional teaching or administrative certificate or lesser license, a paraprofessional certificate or lesser license, a service certificate or lesser license, or a coaching certificate or lesser license should be suspended, revoked or denied for cause.
- 4.810.1a. The A teaching certificate suspension, revocation or denial for cause hearing shall be open to the public, unless the teacher, school bus operator or applicant requests that it be closed. The Hearing Office may close portions of the hearing to the public when evidence protected under the Family Education Rights and Privacy Act, 12 U.S.C. §1332g, is presented. Students shall be referred to by their initials whenever possible.
- 4.810.2b. The WVDE bears the burden of proof and shall present its evidence first. The burden of proof level, i.e., preponderance of evidence or clear and convincing is set forth in W. Va. Code §18A-3-6 and §18A-4-8e(4)(C). Purpose of a teaching certificate suspension, revocation or denial for cause hearing is to allow the teacher or applicant due process regarding the asserted causes for revocation, suspension, or denial of the teaching certificate. The teacher, school bus operator or applicant may present his or her position through presentation introduction of evidence, examination and cross-examination of witnesses, and oral argument.
- 4.810.3c. The Hearing Officer may also call witnesses and question them, as well as those called by the teacher or applicant parties. The Hearing Officer may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument when heard.

- 4.810.4d. A hearing may be adjourned from one day to another or to another place either by announcement by the Hearing Officer at the hearing or by appropriate notice.
- 4.810.5e. The Superintendent, a designee or his or her designee the Chair of the appropriate Panel may grant a continuance for good cause shown by the requesting party or upon his/her own motion.
- 4.910.f. Authority of Hearing Officer. The Hearing Officer shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the Hearing Officer's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters.
- 4.910.g. The Hearing Officer shall have authority to recommend that a teacher's or school bus operator's certificate be revoked, suspended, or denied for cause by the Superintendent, and to recommend conditions upon which a certificate may be restored.
- 4.4710.h. Hearings shall be recorded by electronic means or by a court reporter.
- 4.10_i. Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the Hearing Officer desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The Superintendent may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the Hearing Officer's knowledge. Parties may be given a fair opportunity to refute the facts so noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted or to a determination of appropriate relief. Revocation, suspension, or other action against the certificate of a teacher or school bus operator in another jurisdiction or refusal by another jurisdiction to issue a teacher or school bus operator certificate shall be *prima facie* evidence of grounds for revocation, suspension, denial for cause or other action against the certificate in West Virginia.
- 4.4410.j. Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body concerning issues which form or support the basis for the hearing before the Hearing Officer, either party may provide to the Hearing Officer and the other party copies of said transcripts to be used as substantive evidence in the proceedings. The transcript of testimony of any witness or witnesses may be used

in lieu of producing said witness or witnesses at the hearing. The use of transcripts may also be directed by the Hearing Officer in the interest of time.

- 4.1210.k. Briefs-Findings and Oral Argument. At the discretion of the Hearing Officer, the All-parties shall have the opportunity to may submit briefs proposed findings on the matter, or, in the alternative, and to present oral argument at the conclusion of the hearing. if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the Hearing Officer shall otherwise order. Briefs, Proposed findings, if any, shall be submitted within the time fixed by the Hearing Officer.
- 4.4311. Failure to Participate. Upon failure of a teacher, school bus operator or applicant to contest the asserted causes for revocation of a certificate or lesser license or for the denial for cause of a certificate or lesser license, or upon failure of a party respondent to appear and defend against the petitioner's claims, all of the allegations/claims duly made may be accepted by the Hearing Officer as confessed.
- 4.1412. Failure to Cooperate. The <u>Hearing Officer may request that the Superintendent</u>, on his or her own initiative or at the request of the designee, may institute judicial proceedings for punishment of to sanction persons for contemptuous conduct directed to the Hearing Officer in the course of a proceeding.
- 4.1513. Written Decision. If the parties are not submitting written proposed findings, the Panels may deliberate at the conclusion of the hearing and announce their decision to the parties orally, which will then be reduced to a written decision. Every decision of the Hearing Officer shall be embodied in a written recommendation which shall contain both findings of fact and conclusions of law and an appropriate recommended resolution. Such written decisions shall be issued by the Hearing Officer to the Superintendent. An appropriate Order setting forth a decision regarding suspension, revocation or recall of certification or denial for cause or other action shall then be issued by the Superintendent within sixty (60) days of receipt of the Hearing Officer's written decision. The Order shall either adopt the recommendations of the Hearing Officer or contain a factual or legal basis for varying from the recommendations of the Hearing Officer. The Order and the Hearing Officer's written decision shall be mailed to the parties. When the case is heard directly by the Superintendent, the Superintendent shall issue a written decision which shall set forth the findings of fact and conclusions of law and an appropriate Oorder within sixty (60) days of the hearing or receipt of any proposed findings. Said Orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record. within thirty (30) days following the receipt of the recommendations by the Superintendent or within thirty (30) days of the hearing if the same was conducted by the Superintendent.
- 4.1614. Waiving of Rules. Any of the provisions of these rules relating to the presentation of <u>a party's his/her</u> case or argument may be waived by <u>the any</u> party or his/her <u>representative or attorney</u>.

§126-4-5. Other Hearings.

5.1 Hearing on Removal of a School Official. Hearings conducted for removal of a county school official shall be conducted following the general rules in §126-4-3 of this policy.

§126-4-65. Appeal to Circuit Court.

- 65.1. Any party other than the WVDE not dissatisfied with the decision rendered by the Superintendent or his or her designee may appeal the same to the Circuit Court within 30 days of receipt mailing of the Order. to the last known address of the party.
- 65.2. Upon the West Virginia Department of Education's WVDE's receipt of notice of an appeal, a transcript of the proceedings held in accordance with the provisions of this policy shall be made and forwarded to all named parties at the expense of the West Virginia Department of Education WVDE.

§126-4-<u>6</u> 7. Severability.

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

POLICY 1340: Rules and Procedures for Administrative Hearings and Appeals

COMMENT PERIOD ENDS: April 15, 2013

COMMENT RESPONSE FORM

NOTICE: Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.

rings and Appeals. Addition	al sheets may be attached, if
Organization:	
State	:
escribes your role.	
□ School System Staff□ Teacher□ Service Personnel	□ Parent/Family□ Business/Industry□ Community Member
MENTS/SUGGESTIONS	
	Organization:State escribes your role. □ School System Staff □ Teacher □ Service Personnel

§126-4-3. General Rules.
C126 4 4 Deslaw Con Handen on Tanahan and Calcad Desc On and Asia
§126-4-4. Rules for Hearings on Teacher and School Bus Operator
Certification/Revocation/Recall/Denial for Cause.
§126-4-5. Appeal to Circuit Court.
3120 1 C. Tippem to Circuit Court.
§126-4-6. Severability.

Please direct all comments to:

Charles K. Heinlein
Deputy Superintendent
West Virginia Department of Education
Capitol Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: cheinlei@access.k12.wv.us
Fax No.: (304) 558-0048