



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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5/15/2014 4:29:14 PM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**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-  
188**  
RULE NAME **Conflict Resolution Process for Citizens (7211)**

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, June 16, 2014 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO  
**Sherri D. Goodman, Staff Attorney  
WVDE Office of Legal Services  
Capitol Building 6, Room 362  
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: 126-188



Rule Id: 9433



Document: 25793



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

AGENCY	Education		
RULE TYPE	Legislative Exempt	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Conflict Resolution Process for Citizens (7211)		TITLE-SERIES 126-188

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**

The new Policy 7211 seeks to promote a quicker resolution of citizen claims, thereby reducing one source of the claimants frustration with the process. It would also reduce the demands on the county school systems resources. The elimination of a second hearing at the State Superintendents level leaves the Level 3 administrator free to obtain needed information more efficiently and quickly.

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.



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

**AGENCY** Education

**RULE TYPE** Legislative Exempt AMENDMENT TO EXISTING RULE Yes **TITLE-SERIES** 126-

**RULE NAME** Conflict Resolution Process for Citizens (7211) 188

**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.**

**No impact on costs and revenues of state government.**

**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.**



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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 **126-188**  
RULE NAME **Conflict Resolution Process for Citizens (7211)**

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	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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: 126-188



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**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 **Conflict Resolution Process for Citizens (7211) 188**

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.**

**No impact on costs and revenues of state government.**

**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: 126-188



Rule Id: 9433



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

AGENCY	Education		
RULE TYPE	Legislative Exempt	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Conflict Resolution Process for Citizens (7211)		TITLE-SERIES 126-188

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.

The same amount of time and resources will be devoted to this complaint process as is being expended under the current complaint process.

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: 126-188



Rule Id: 9433



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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY	Education				
RULE TYPE	Legislative Exempt	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	126-188
RULE NAME	Conflict Resolution Process for Citizens (7211)				

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 CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The proposed Policy 7211, Conflict Resolution Process for Citizens, creates a more streamlined and realistic dispute resolution process by which members of the public who perceive that a school or school district has violated state laws or West Virginia Board of Education policies may discuss their claims in a less adversarial process. The new policy has three levels instead of five (informal conference and Levels I through IV): an informal conference with the principal at the school level, a conference or hearing, at the claimants choosing, at the county superintendent level and a review by the State Superintendent or his/her designee, referred to as the Level 3 administrator. A Level 2 conference or hearing may be conducted in a manner similar to a Level 1 employee grievance. The Level 3 administrator may conduct his/her own inquiry by e-mailing or calling people individually or by obtaining additional documents if the record review raises questions. There is no appeal from a Level 3 decision.

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: 126-188



Rule Id: 9433



Document: 25793

## **EXECUTIVE SUMMARY**

### **WEST VIRGINIA DEPARTMENT OF EDUCATION**

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**Policy Number and Title:** Policy 7211 “Conflict Resolution Process for Citizens” replacing Policy 7211 “Appeals Procedure for Citizens.”

**Background:** The current Policy 7211 is unwieldy. It requires a citizen to have an informal conference with the school administrator before filing an “appeal.” Then, the appeal process has four levels; Level III is a hearing before the local board of education; level IV is a completely new hearing before the State Superintendent or independent hearing officer. It creates an unjustified expectation in the citizens concerning the scope of the state superintendent’s authority.

**Proposals:** The proposed Policy 7211, “Conflict Resolution Process for Citizens,” creates a more streamlined and realistic dispute resolution process by which members of the public who perceive that a school or school district has violated state laws or West Virginia Board of Education policies may discuss their claims in a less adversarial process. The new Policy has three levels instead of five (informal conference and Levels I through IV): an informal conference with the principal at the school level, a conference or hearing, at the claimant’s choosing, at the county superintendent level and a review by the State Superintendent or his/her designee, referred to as the Level 3 administrator. A Level 2 conference or hearing may be conducted in a manner similar to a Level 1 employee grievance. The Level 3 administrator may conduct his/her own inquiry by e-mailing or calling people individually or by obtaining additional documents if the record review raises questions. There is no appeal from a Level 3 decision.

**Impact:** The new Policy 7211 seeks to promote a quicker resolution of citizen claims, thereby reducing one source of the claimants’ frustration with the process. It would also reduce the demands on the county school system’s resources. The elimination of a second hearing at the State Superintendent’s level leaves the Level 3 administrator free to obtain needed information more efficiently and quickly.



TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION

SERIES 188  
CONFLICT RESOLUTION PROCESS FOR CITIZENS (7211)

**§126-188-1. General.**

1.1. Scope. - The purpose of this conflicts resolution process is to provide a way for citizens to work with county school district administrative officials in seeking solutions to problems when there is a failure to provide a high quality education that resources permit the school district to provide or for violation of any other legal duty. Both the schools and the citizenry of the community are better served when a sincere effort is made to find constructive solutions to problems that arise. It is the intent of this process to provide a simple, straightforward, and easily understood method for resolving problems at the lowest possible administrative level, as fairly and as quickly as possible. The procedures set forth herein are not deemed to be a pre-condition to seeking relief in some other forum.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §18-2-5.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of Former Rule. - This procedural rule repeals and replaces W. Va. 126CSR188 West Virginia Board of Education Policy 7211, Appeals Procedure for Citizens, filed September 8, 1987, and effective October 9, 1987.

**§126-188-2. Definitions.**

2.1. Days. - Days shall mean the days the business office of the county board of education is open. Such offices are generally closed on Saturdays, Sundays, and official holidays. Claims appropriately brought to the school principal at Level 1 must be made at least ten days before the end of the school year. If this deadline cannot be met, a claim may be brought at the beginning of next school year.

2.2. Dispute Resolution Process. - The dispute resolution process is the method by which one or more citizens presents a claim of a violation of state law or the policies, rules and regulations of the West Virginia Board of Education (“WVBE”). The written claim must identify the specific state law or WVBE policy, rule or regulation which is alleged to be violated, and shall include as much information as possible to describe the violation. Copies of the policies, rules and regulations of the WVBE are to be available for public review at each county board of education office or at a link to <http://wvde.state.wv.us/policies/> on the county board of education website.

2.2.a. The dispute resolution process shall not apply to any situation where the school district is without authority to act, or where a remedy is specifically established by law, such as for the placement of exceptional children. Neither shall the term apply when a citizen has a personal complaint about a school employee. Each county board of education shall establish its own specific procedures to handle complaints about school employees and for other citizen complaints not governed by this policy.

2.3. State Law. - State law shall mean the constitution, statutes, judicial law, and administrative law of the State of West Virginia.

### **§126-188-3. Procedure.**

3.1. Distribution of Conflict Resolution Process. - Copies of this policy will be readily accessible to citizens at the office of the State Superintendent of Schools (“State Superintendent”), the West Virginia Department of Education website, the office of each county board of education, the website for each county board of education and at each public school.

3.1.a. Each county shall notify parents annually of this policy and its contents. Notification may be accomplished by use of a student handbook, inclusion on the county website or other reasonable means.

3.2. Claim Forms. - The State Superintendent shall prepare and make available appropriate forms for each claim level. Such forms shall be available on the West Virginia Department of Education website, at the office of the State Superintendent, at the office of each county board of education, and at each public school.

3.3. Filing of Claims. - The citizen claimant making the written claim shall provide as much information as possible when the claim is filed; however, additional supportive information may be presented at any level.

3.4. Time Limits. - Since it is important that a claim be processed as rapidly as possible, the number of days indicated at each level should be considered the maximum. A time limit may, however, be extended by mutual agreement or by the unavailability of the citizen claimant.

3.5. Privacy of Conferences and Hearings. - All conferences and hearings held during the conflict resolution process shall be conducted in private.

3.6. Representation. - The citizen claimant may have the assistance of a representative at any level.

3.7. Written Decisions. - All decisions rendered shall be in writing, setting forth the decision and the reasons therefor. The decision shall be transmitted promptly to all parties.

### **§126-188-4. Processing of Claims.**

4.1. Level 1. - A written claim shall be filed with the principal by the citizen or by a group of citizens. The claim shall be on the prescribed form and be signed by all persons making the claim. The principal or his/her designee (“Level 1 administrator”) shall meet with the citizen claimant for an informal conference within ten (10) days of receipt of the claim. A written decision by the Level 1 administrator shall be made within fifteen (15) days after the informal conference. A copy of the Level 2 claim form shall be included with the decision.

4.2. Level 2. - Within fifteen (15) days after receiving the decision of the Level 1 administrator, an aggrieved citizen claimant may request in writing a conference or a hearing with the county superintendent on the prescribed form. The county superintendent or his/her designee (“Level 2 administrator”) shall, within fifteen (15) days, conduct a conference or a hearing with the citizen claimant in an attempt to resolve the claim. In the event that the citizen claimant requests a hearing, he/she may present witnesses to testify under oath, and the Level 2 administrator may also take testimony from staff members deemed necessary to render a decision. Hearings shall be recorded. The Level 2 administrator

shall issue a written decision within fifteen (15) days following a conference and twenty-five (25) days following a hearing. A copy of the Level 3 claim form shall be included with the decision.

4.3. Level 3. - If the citizen claimant is not satisfied with the decision of the Level 2 administrator, he or she may request in writing on the prescribed form a review by the State Superintendent within thirty (30) days of receipt of the decision. A copy of the Level 1 and 2 decisions and any supporting documents shall accompany the request for a review. In the event a Level 2 hearing was conducted, the Level 2 administrator shall forward a transcript of the hearing to the State Superintendent.

4.3.a. The State Superintendent or designee ("Level 3 administrator") shall conduct a review of the claim, which will, at a minimum, consist of reviewing the record from Levels 1 and 2. He/she may also conduct an additional inquiry if necessary for resolution of the claim by contacting the citizen claimant, the county superintendent or any other individual who may be of assistance and by requesting additional documents from any source.

4.3.b. Upon completion of the review, the Level 3 administrator shall render a written decision within thirty (30) days. The decision shall set out any information that the Level 3 administrator obtained during his/her additional inquiry and relied upon in making the decision. The decision by the Level 3 administrator shall be final.

#### **§126-188-5. Severability.**

5.1. 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.

**126CSR188**

**POLICY 7211: Conflict Resolution Process for Citizens**

**COMMENT PERIOD ENDS: June 16, 2014**

**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.

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The following form is provided to assist those who choose to comment on Policy 7211: Conflict Resolution for Citizens. Additional sheets may be attached, if necessary.

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Please check the box below that best describes your role.

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> School System Superintendent | <input type="checkbox"/> School System Staff | <input type="checkbox"/> Parent/Family     |
| <input type="checkbox"/> Principal                    | <input type="checkbox"/> Teacher             | <input type="checkbox"/> Business/Industry |
| <input type="checkbox"/> Professional Support Staff   | <input type="checkbox"/> Service Personnel   | <input type="checkbox"/> Community Member  |

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<b>COMMENTS/SUGGESTIONS</b>
<b>§126-188-1. General.</b>
<b>§126-188-2. Definitions.</b>

**126CSR188**

**§126-188-3. Procedure.**

**§126-188-4. Processing of Claims.**

**§126-188-5. Severability.**

Please direct all comments to:

Sherry D. Goodman, Staff Attorney  
Office of Legal Services  
West Virginia Department of Education  
Capitol Building 6, Room 362  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330  
E-Mail Address: [sgoodman@access.k12.wv.us](mailto:sgoodman@access.k12.wv.us)  
Fax No.: (304) 558-0048.