



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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2/10/2021 4:26:45 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-008

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Drug-Free Workplace (Policy 1461)

CITE STATUTORY 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); and, W. Va. Bd. of Educ. V. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 03/15/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Jonah Adkins, Coordinator

ADDRESS: WVDE Office of Support and Accountability, Capitol Bldg. 6, Room 700
1900 Kanawha Blvd E, Charleston, WV 25305

EMAIL: jwadkins@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Drug-Free Workplace Act of 1988 (41 U.S.C. 81) requires that all state agencies receiving direct funds from the federal government provide a drug-free workplace.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Policy 1461 was reviewed to ensure compliance with current federal and state laws and regulations and to serve as a template for county boards of education and public charter schools for their own policies. The West Virginia Department of Education first adopted this policy in 1989; the policy was revised in 1992.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No costs or revenue will be impacted by the proposed amendment of W. Va. 126CSR8, Policy 1461.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact to the state or its residents as a result of the proposed amendment of W. Va. 126CSR8, Policy 1461.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact to the state or its residents as a result of the proposed amendment of W. Va. 126CSR8, Policy 1461.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No costs, revenue, or economic impact to the state or its residents will result from the proposed amendment of W. Va. 126CSR8, Policy 1461.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Michele L Blatt -- 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.

**Policy 1461, Drug-Free Workplace
List of Stakeholders**

West Virginia Department of Education

Internal Stakeholders

- Jonah Adkins, Coordinator, Leadership Support Services
- Drew McClanahan, Director, Leadership Support Services
- Taran Wolford, Director, Office of Human Resources
- Josh Grant, Coordinator, Middle and Secondary Learning Services
- Timothy Elliott, Coordinator, Career Technical Education Services

External Stakeholders

- Carol Hamric, Human Resources Director, Kanawha County
- Dr. Justin Schooley, Human Resources Director, Berkeley County
- Dr. Sara Stankus, Superintendent, Former Principal, Upshur County
- Dr. Deirdre Cline, Superintendent, Wyoming County
- John Rogers, Principal, Mountaineer Middle School, Harrison County
- Rosemarie Kelly, Principal, Ridgeview Elementary School, Raleigh County
- Paul Mihalko, Principal, Morgantown High School, Monongalia County
- Tommy Grant, Pro-Start Teacher, Carver Career Center, WV Teacher of the Year Finalist, Kanawha County
- Holly McBride, Teacher, Wyoming County
- Christy Landes, Teacher, Hardy County

126CSR8

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 8
DRUG-FREE WORKPLACE (1461)

§126-8-1. General.

1.1. Scope. -- This ~~policy rule~~ applies to all employees of the West Virginia Board of Education (WVBE), West Virginia Department of Education (WVDE), and to all county boards of education, and public charter schools in the State of West Virginia.

1.2. Authority. -- ~~Drug-Free Workplace Act 1988 (P.L. 100-690), West Virginia Constitution, Article XII, §2, and W. Va. Code §18-2-5, and the Drug-Free Workplace Act of 1988 (41 U.S.C. 81).~~

1.3. Filing Date. -- ~~December 22, 1992.~~

1.4. Effective Date. -- ~~February 1, 1993.~~

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR8, Policy 1461, Drug-Free Workplace, filed December 22, 1992, and effective February 1, 1993.

§126-8-2. Purpose.

2.1. To provide for a ~~Drug-Free W~~ workplace for all persons in the public schools of West Virginia- that are safe, healthful, productive, and secure.

2.2. To provide a template for county boards of education and public charter schools to use in developing local drug-free workplace policies.

§126-8-3. Definitions.

3.1. Alcohol: ~~Alcoholic beverages and any other intoxicating liquid which contains alcohol.~~

3.2. Contractor: ~~Any Department, division, unit, or any person responsible for the performance of work under a contract.~~

3.3. Controlled Substance: ~~A Federally regulated substance listed in Exhibit A and/or Schedule I through V of Section 202 of the Control Substances Act, (21 U.S.C. 812) and W. Va. Code §60A-2-201, et seq., (which may be amended from time to time), which, when taken into the body, may impair one's mental faculties and/or physical performance.~~

3.4. Conviction: ~~A finding of guilty, (including a plea of nolo contendere), or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State Criminal ~~Drug~~ Statutes.~~

3.5. Criminal Drug Statute: ~~A Criminal statute involving the manufacture, distribution, dispensation,~~

use, or possession of any controlled substance.

3.6. Drug-Free Workplace: ~~A w~~Worksite where work is performed in connection with the employee's ~~Department of Education~~ employment. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.

3.7. Employee: ~~Any p~~Person who works full-time, part-time, or under contract, including management or temporary staff ~~who are directly engaged in the performance of work pursuant to the mission of the Department of Education.~~

3.8. Federal Agency: ~~An a~~Agency as ~~that term is defined in section 552(f) of Title IV, United States Code 18 U.S.C. 6.~~

3.9. Grantee: ~~Any d~~Department, division, unit, or any person responsible for the performance of work under the provisions of a ~~federal~~ grant.

3.10. Illegal Drug: ~~Any d~~Drug which is not legally obtainable or a drug that and is being used in a manner or for a purpose other than as prescribed.

3.11. Legal Drug: ~~Prescribed drugs and over-the-counter drugs which have been legally obtained and are being used solely for the purpose for which they were manufactured~~ or and as prescribed by a physician.

§126-8-4. Content.

4.1. ~~It is the This policy of the West Virginia Department of Education to ensure~~ that its workplaces are free of illegal drugs and controlled substances by prohibiting the unlawful manufacture, distribution, dispensation, possession, or use, without medical authorization, of illegal or controlled substances and/or alcohol; the reporting to work under the influence of a non-medically prescribed controlled substance or alcohol; or possession of non-medically prescribed paraphernalia.

4.2. ~~Theis~~ policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled workdays, meal breaks, and/or occasions having an official connection with the job or the agency.

4.3. Possession and/or distribution of a controlled substance will be dealt with promptly in accordance with legal requirements and administrative disciplinary procedures.

4.3.1a. Employees who are in violation of the provisions of the Drug-Free Workplace Act shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program. ~~Rehabilitation Resources will shall~~ be provided according in accordance to with the guidelines of the West Virginia Public Employees Insurance Agency guidelines.

4.3.2b. ~~The West Virginia Department of Education WVDE will take appropriate personnel action in accordance with the disciplinary procedure outlined in the West Virginia Department of Education WVDE Employee Handbook. The handbook states that "When an offense is of a magnitude to warrant it, an employee may be suspended without pay or may be dismissed from employment. Reasons for suspension or dismissal may be misuse of state property, insubordination, incompetence, willful neglect of duty,~~

~~reporting to work under the influence of alcohol, narcotics, or other illegal controlled substances, fraud, activities involving conflict of interest and violations of law and/or policy of the Board. Suspension or dismissal may be effective immediately; however, action shall be taken within ten (10) workdays or knowledge of the offense."~~

~~4.3.3c. State or county agencies ~~who~~ that are contractors or grantees of federal contracts or grants amounting to at least twenty five thousand dollars (\$25,000) are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace, if they make a false initial certification, or if the number of drug-related convictions of employees indicates that the employer hasn't not made a good faith effort to maintain a drug-free workplace.~~

~~4.4. The policy's primary goal is to ensure that alcohol and illegal drug and/or controlled substance use is eliminated in the workplace and that the West Virginia Department of Education WVDE workplace is safe, healthful, productive, and secure for its employees and citizens.~~

~~4.54. As a condition of employment with the West Virginia Department of Education WVDE, employees shall:~~

~~4.54.1a. Abide comply ~~by~~ with the terms of this policy; ~~compliance is mandatory;~~~~

~~4.54.2b. Notify their supervisor ~~or department head~~ of any criminal drug or alcohol statute conviction for a violation occurring in the workplace or conviction outside of the workplace, no later than 5 five days after such ~~conviction~~ violation or conviction occurs; and~~

~~4.54.3c. Sign the "Drug-Free Workplace Verification Statement."~~

~~4.65. It shall be the responsibility of the Division of Administrative Services to establish a drug awareness program for Department of Education employees to provide information on the following: Resources shall be made available to employees by the WVDE Office of Human Resources, according to the guidelines of the West Virginia Public Employees Insurance Agency.~~

~~4.6.1. The Employee Referral Program;~~

~~4.6.2. The dangers of drug abuse in the workplace;~~

~~4.6.3. The establishment and maintenance of a drug free workplace;~~

~~4.6.4. The penalties for workplace drug abuse;~~

~~4.6.5. Available drug free literature.~~

§126-8-5. County Board of Education and Public Charter School Responsibility.

~~5.1. Each ~~County~~ County boards of education and public charter schools shall develop a policy containing the standards consistent with this policy and shall require every employee to sign a copy of a ~~Drug-Free~~ Workplace Verification Statement which states that the employee is aware of the policy and shall ~~abide~~ comply ~~by~~ with the terms of the policy.~~

§126-8-6. Severability.

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

West Virginia Department of Education

DRUG-FREE WORKPLACE VERIFICATION STATEMENT

NAME: _____

~~SOCIAL SECURITY NUMBER~~ EMPLOYEE IDENTIFICATION NUMBER: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

Date Employed by West Virginia Department of Education: _____

I, _____, certify that I have received a copy of ~~the West Virginia State~~ West Virginia Board of Education Policy 1461, Drug-Free Workplace ~~Policy~~.

As an employee of the West Virginia Department of Education, I agree to ~~abide~~ comply by with the ~~Drug-Free Workplace Policy 1461~~ Drug-Free Workplace Policy 1461 which states that the unlawful manufacture, distribution, dispensing, ~~ation,~~ possession, or use of a controlled substance and/or alcohol is prohibited in the workplace. Additionally, ~~no~~ employee shall not report for work while under the influence of alcohol and/or an illegal drug.

The workplace shall be defined as a worksite where work is performed in connection with the employee's West Virginia Department of Education employment. The workplace shall include but not be limited to facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.

The policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled workdays, meal breaks, and/or occasions having an official connection with the job or the agency.

In addition, I understand that, ~~under federal law and~~ as a condition of employment, ~~if I am convicted of any violation of a criminal drug offense in the workplace, I must~~ shall ~~notify~~ report this conviction to my supervisor of any criminal drug or alcohol violation occurring in the workplace or conviction outside of the workplace, and the appointing authority within no later than five (5) days of after the such violation or conviction occurs.

Employee Signature

Date

**W. Va. 126CSR8, Policy 1461, Drug-Free Workplace
Comment Response Form**

Comment Period Ends: March 15, 2021

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.*

The following form is provided to assist those who choose to comment on **Policy 1461, Drug-Free Workplace**. 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"/> Superintendent | <input type="checkbox"/> Higher Educator | <input type="checkbox"/> Parent/Family |
| <input type="checkbox"/> Principal | <input type="checkbox"/> Teacher | <input type="checkbox"/> Community Member |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Other |

COMMENTS/SUGGESTIONS
§126-8-1. General.
§126-8-2. Purpose.
§126-8-3. Definitions.
§126-8-4. Content.
§126-8-5. County Board of Education and Public Charter School Responsibility.
§126-8-6. Severability.

**W. Va. 126CSR8, Policy 1461, Drug-Free Workplace
Comment Response Form**

Please direct all comments to:

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West Virginia Department of Education
Capitol Building 6, Room 700
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
Email Address: jwadkins@k12.wv.us
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