



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/11/2021 11:48:33 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-143
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: County Superintendent Performance Evaluations (5309)
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: 04/12/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Matt Hicks, Director
ADDRESS: WVDE Accountability Services, Capitol Bldg. 6, Room 700
1900 Kanawha Blvd., E, Charleston, WV 25305
EMAIL: mhicks@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:

Policy 5309 governs the approval of processes by which county boards of education annually evaluate the performance of their superintendents.

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

Policy 5309 is being revised to clearly set forth requirements of W. Va. Constitution, Article XII, §2, and W. Va. Code §18-2-5 and §18-4-6, and to correct language and inconsistencies in formatting.

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. 126CSR143, Policy 5309.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of W. Va. 126CSR143, Policy 5309.

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. 126CSR143, Policy 5309.

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. 126CSR143, Policy 5309.

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 5309, County Superintendent Performance Evaluations
List of Stakeholders**

West Virginia Department of Education

External Stakeholders

- John Hudson, Superintendent, Putnam County
- Patrick Murphy, President, Berkeley County Board of Education
- Howard O’Cull, Ed.D., Executive Director, WV School Board Association, Kanawha County
- Blaine Hess, Superintendent, Jackson County
- David Price, Superintendent, Raleigh County
- Nancy Walker, Member, Monongalia County Board of Education
- Eddie Campbell, Superintendent, Monongalia County
- Jim Crawford, Member, Kanawha County Board of Education
- Charlotte Hutchens, Member, Raleigh County Board of Education
- Steve Chancey, Member, Jackson County Board of Education

Internal Stakeholders

- Margaret Williamson, Director, School Improvement Services
- Jonah Adkins, Coordinator, Leadership Support Services
- Alexandra Criner, Coordinator, Accountability Services
- Eva Marcum, Coordinator, School Improvement Services
- Susan Young, Coordinator, Accountability Services
- Matt Hicks, Director, Accountability Services
- Charlene Coburn, Senior Officer, Office of Support and Accountability

126CSR143

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 143
COUNTY SUPERINTENDENT PERFORMANCE EVALUATIONS (5309)

§126-143-1. General.

1.1. Scope. -- This rule governs the approval of processes by which county boards of education (county board) annually evaluate the performance of their superintendents.

1.2. Authority. -- W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-2-5 and §18-4-6.

1.3. Filing Date. -- ~~December 12, 2003.~~

1.4. Effective Date. -- ~~January 11, 2004.~~

1.5. ~~Repeal of Form Rule. — None. This is a new rule. This legislative rule amends W. Va. 126CSR143, Policy 5309, County Superintendent Performance Evaluations, filed December 12, 2003, and effective January 11, 2004.~~

§126-143-2. Purpose.

2.1. The purpose of this policy is to prescribe how the West Virginia Board of Education (WVBE) will exercise authority set forth in W. Va. Code §18-4-6 which requires the West Virginia Board of Education (hereinafter State Board) WVBE to authorize the processes by which county boards of education (hereinafter county board) shall annually evaluate the performance of their county superintendents.

2.2. ~~The purpose of this policy is to prescribe how the State Board WVBE will exercise that authority.~~

§126-143-3. ~~Authorization Required~~ Responsibilities.

3.1. Each county board shall annually evaluate the performance of its superintendent in accordance with a process authorized by the ~~State Board~~ WVBE pursuant to this policy.

3.2. A county board shall not evaluate its superintendent ~~under~~ using a process that has not been approved by the ~~State Board~~ WVBE.

3.3. Nothing in this policy shall be interpreted to require a county board to evaluate an interim superintendent serving pursuant to W. Va. Code §18-4-1.

3.4. During any period ~~that~~ the ~~State Board~~ WVBE intervenes in the operation of a school system pursuant to W. Va. Code §18-2E-5, the county board shall not evaluate the superintendent's performance unless directed to do so by the State Superintendent of Schools (State Superintendent).

~~§126-143-4. Processes for School Year 2003-2004.~~

~~4.1. Before evaluating the performance of its superintendent for the 2003-2004 school year, the county board shall submit to the State Superintendent of Schools (hereinafter State Superintendent) a written description of the evaluation process it proposes to follow including a copy of any evaluation forms to be used as part of the process.~~

~~4.2. The State Superintendent, on behalf of the State Board, is authorized to approve the proposed process for the 2003-2004 school year if, in the State Superintendent's reasonable opinion, the proposal satisfies the criteria of section 6 of this policy.~~

§126-143-54. Evaluation Processes for Subsequent School Years 2022-2023 and Subsequent Years.

~~54.1. Beginning with the 2022-2023 school year, before evaluating the annual performance of its the superintendent, for the 2004-2005 school year, the county board shall submit to the State Superintendent, for approval by the State Board WVBE, a written description of the evaluation process which the county board proposes to follow, including a copy of any evaluation forms to be used as part of the process.~~

~~54.21.a. In order to receive State Board WVBE approval by July 1, the county board must initially submit its proposed evaluation process to the State Superintendent before the preceding December 31. Proposals submitted after that date will be considered, but may not be approved by July 1.~~

~~4.1.b. If the State Superintendent determines a proposed evaluation process submitted by the county board meets the mandatory requirements of section 5, the State Superintendent shall bring the proposal to the WVBE for consideration.~~

~~54.31.c. If it appears to the State Superintendent determines that an evaluation process proposed by the county board does not meet the requirements of section 6 5 of this policy, the State Superintendent shall return the proposal to the county board, identifying any areas of noncompliance. After revising the proposed process to comply with the requirements of section 6 5, the county board shall submit to the State Superintendent, the revised evaluation process for approval by the State Board WVBE, a written description of the revised proposal.~~

~~4.4. If, in the State Superintendent's opinion, a proposed evaluation process submitted by the county board meets the mandatory requirements of section 6 of this policy, the State Superintendent shall promptly bring the proposal to the State Board for consideration, regardless of the State Superintendent's opinion about other aspects of the county board's proposal. If the State Superintendent is concerned about any aspect of the proposal, the State Superintendent shall so inform the State Board of the concern.~~

~~54.52. If the State Board WVBE does not approve a county board's proposed evaluation process, the county board shall revise the proposal evaluation process to address the State Board's WVBE's concerns and submit a written description of the revised proposal evaluation process to the State Superintendent for approval by the State Board WVBE.~~

~~54.63. Once the State Board WVBE approves the county board's process for evaluating the superintendent's performance, the county board shall continue to utilize the approved process until the State Board WVBE authorizes or requires the county board to employ a different process.~~

~~54.74.~~ If a county board wishes to revise the superintendent evaluation process, the county board must submit the process for review to the State Superintendent and obtain WVBE approval.

§126-143-65. Required Process Criteria.

65.1. The process by which the county board of education shall annually evaluate the performance of ~~it's~~ the superintendent shall include the following criteria:

65.1.1. ~~The process shall require~~ Before September 15, the county board and the superintendent ~~to annually, before September 15,~~ shall annually establish written, measurable, and timely goals or objectives for the superintendent to accomplish ~~within a given period of time~~. Each goal or objective shall include a specific ~~time line~~ timeline for completion. The ~~time line~~ timeline need not be the same for each goal or objective, and the ~~time line~~ timeline for any goal or objective may extend beyond the end of the ~~then~~ current school year. At least one goal must relate to student achievement.

65.1.2. The process shall specify how the goals or objectives will be established when the county board and the superintendent seem unable to agree. ~~To that end,~~ The process may provide that the parties ~~will~~ petition the ~~State Board~~ WVBE to designate an individual to facilitate agreement on goals or objectives, that the county board will engage the West Virginia School Boards Association and the West Virginia Association of School Administrators to facilitate agreement, or that ~~some~~ an other specific procedure will be followed to break the impasse.

65.1.3. The process shall require the county board to annually, ~~before June 30,~~ assess the superintendent's achievement of the written goals or objectives before June 30, except that the assessment shall be made before March 1 if the superintendent's contract is set to expire on the ensuing June 30.

65.1.4. The process shall require the county board to annually, before June 30, evaluate the superintendent's success in improving student achievement generally across the county and specifically as it relates to the management and administration of low performing schools, except that this evaluation shall be made before March 1 if the superintendent's contract is to expire on the ensuing June 30.

65.1.5. The process shall require the county board to evaluate the superintendent's performance in executive session, and to ~~thereafter~~ make available to the public a general statement about the evaluation process and the overall result. The process shall specify how the county board will arrive at the general statement about the evaluation process and the overall result.

65.1.6. The process shall allow for the release of additional information about the evaluation only by mutual consent of the superintendent and the county board.

§126-143-76. Optional Process Criteria.

76.1. The process by which the county board shall annually evaluate the performance of its superintendent may include these ~~features~~ criteria:

76.1.1. The process may require or allow the county board to annually, before June 30, assess the superintendent's performance in the areas of community relations, school finance, personnel

relations, curricular standards and programs, and overall leadership of the school district as indicated primarily by improvements in student achievement, testing and assessment, except that this assessment shall be made before March 1 if the superintendent's contract is to expire on the ensuing June 30. If the process includes such assessments, the process shall specify how the assessments will be made, including any ratings or rankings that will be employed.

76.1.2. The process may require or allow the county board to assess annually, before June 30, the superintendent's performance of any of the other duties of the chief executive officer of the county board as delineated in the superintendent's contract or other written agreement with the county board [W. Va. Code §18-4-10(1)], and the degree to which the superintendent keeps the county board apprised continuously of any issues that affect the county board or its schools, programs, and initiatives. [W. Va. Code §18-4-10(9).]

76.1.3. The process may, with the consent of the superintendent who is to be evaluated, incorporate input from other parties, such as citizens and school employees, about the superintendent's performance. However, any such input shall be used only to inform the county board in its evaluation of the superintendent.

§126-143-87. Catalog of Evaluation Instruments.

87.1. The West Virginia School Boards Association shall maintain a catalog of evaluation instruments which comply with this policy and shall make them available to county boards.

§126-143-98. Use of Evaluation Results.

98.1. A county board may use the results of its evaluation of the superintendent's performance to determine whether to offer the superintendent a new contract and the level of compensation or benefits to offer the superintendent in any new contract.

§126-143-109. Evaluation Training.

109.1. As an integral part of the process for evaluating the performance of superintendents for the ~~2004-2005~~ 2022-2023 school year and subsequent school years, all county board members and superintendents shall receive evaluation training approved by the ~~State Board~~ WVBE and conducted jointly by the West Virginia School Boards Association and the West Virginia Association of School Administrators.

§126-143-110. Severability.

110.1. If any provision of this ~~rule~~ policy 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.

**W. Va. 126CSR143, Policy 5309, County Superintendent Performance Evaluations
Comment Response Form**

Comment Period Ends: April 12, 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 5309, County Superintendent Performance Evaluations**. 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
§126-143-1. General.
§126-143-2. Purpose.
§126-143-3. Responsibilities.
§126-143-4. Evaluation Processes for School Year 2022-2023 and Subsequent Years.
§126-143-5. Required Criteria.
§126-143-6. Optional Criteria.

**W. Va. 126CSR143, Policy 5309, County Superintendent Performance Evaluations
Comment Response Form**

§126-143-7. Catalog of Evaluation Instruments.

§126-143-8. Evaluation Training.

§126-143-10. Severability.

Please direct all comments to:

Matt Hicks, Director
Accountability Services
West Virginia Department of Education
Capitol Building 6, Room 700
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: mhicks@k12.wv.us
Telephone No.: 304.558.3199.