



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-176
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: School Closings or Consolidations (6204)
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: 08/16/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Micah Whitlow, Manager
ADDRESS: WVDE School Facilities Services
1900 Kanawha Blvd., E, Capitol Bldg. 6, Room 318, Charleston, WV 25305
EMAIL: micah.whitlow@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 6204 sets the requirements for county boards of education (county) in proceeding with a potential school closing or consolidation.

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

Policy 6204 is being repealed and replaced to provide clarification on when the school closure procedures defined in this policy are applicable. The amended policy also enhances, clarifies and technically corrects the requirements that guide the development and dissemination of documents that support the closure or consolidation proposals.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR176, Policy 6204.

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 126CSR176, Policy 6204.

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

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR176, Policy 6204.

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):

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR176, Policy 6204.

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 6204, School Closings or Consolidations
List of Stakeholders**

West Virginia Department of Education

External Stakeholders

- Randall Farley, Superintendent, Marion County
- Todd Alexander, Superintendent, Wayne County
- Deborah Akers, Superintendent, Mercer County
- Dwayne C Smith, Facilities Director, Kanawha County
- Martin Best, Facilities Director, Wood County
- Rosemarie Kelly, Principal Ridgeview Elementary, Raleigh County
- Trent Sherman, Principal Martinsburg High School, Berkeley County
- Benjamin Ashley, Director of Architectural Services, School Building Authority
- David Roach, Executive Director, School Building Authority

Internal Stakeholders

- Amy Willard, Officer, Office of School Operations & Finance
- Micah Whitlow, Manager, Office of School Operations & Finance, School Facilities
- Emmit Allen, HVAC Technician, Office of School Operations & Finance, School Facilities
- Ken Hughart, HVAC Technician, Office of School Operations & Finance, School Facilities
- James Richmond, HVAC Technician, Office of School Operations & Finance, School Facilities
- Jerry Milliken, Coordinator, Office of School Operations & Finance, School Facilities
- Heather Hutchens, General Counsel, Legal Services

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TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 176
SCHOOL CLOSINGS OR CONSOLIDATIONS (6204)

§126-176-1. General.

1.1. Scope. -- This rule sets the requirements for county boards of education (county) in proceeding with a potential school closing or consolidation.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-5-13, 18-5-13a, and 18A-2-7(d).

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. §126CSR176, Policy 6204, School Closings or Consolidations, filed October 13, 2005, and effective November 12, 2005.

§126-176-2. School Closures.

2.1. For the purpose of school closure procedures, a school is defined by its population and educational mission and not just the physical facility.

2.2. When a county proposes an action that would terminate the educational mission of a school and whereby that school becomes defined by another population or educational mission, the school closure procedures set forth by this policy shall apply.

2.3. The following situations are not considered school closures and the procedures set forth in this policy shall not apply to them:

2.3.a. moving a single school population into a new, existing, or renovated facility where its educational mission would continue without termination; or

2.3.b. moving a single school population into a facility that houses another school population and subsequently, each school maintains its own separate operation and assigned mission without termination; or

2.3.c. cases in which a county's voters passed a construction bond issue that specifically stated the school(s) planned for closure or consolidation, and the county's approved Comprehensive Educational Facilities Plan (CEFP) also specified the same action(s). The county shall apply to the West Virginia Board of Education (WVBE) for a CEFP amendment if the approved CEFP did not contain the voter-approved closure or consolidation; or

2.3.d. cases in which a county reconfigures the location and structure of grades along a population's

natural path of vertical progression and whereby the educational mission of any affected school population may be slightly altered but not terminated.

§126-176-3. County Procedures.

3.1. The county shall prepare written reasons and supporting data concerning proposed school closings or consolidations to be submitted to the WVBE for approval in accordance with this policy and W. Va. Code §18-5-13a. The written materials shall:

3.1.a. be available for public inspection in the office of the county superintendent during the 30 days preceding the date of the public hearing; and

3.1.b. be delivered in duplicate to the:

3.1.b.1. principal of a school that is proposed to be closed or consolidated, and of any school which the county designates to receive the students who are relocated as a result of the closure or consolidation; and

3.1.b.2. chair of the local school improvement council (LSIC) representing a school that is proposed to be closed or consolidated, and any school that the county designates to receive the students who are relocated as a result of the closure or consolidation.

3.2. An executive summary shall be prepared including the following items that will summarize with page references to the county's documentation, as defined in section 3.1, those items listed and shall be provided to the WVDE School Facilities Services unit.

3.2.a. Enrollment.

3.2.a.1. Student enrollment trends:

3.2.a.1.A. trends in student population growth or decline in the county for the previous 10 years;

3.2.a.1.B. trends in student population growth or decline in the attendance area of the school targeted for closure or consolidation for the previous 10 years; and

3.2.a.1.C. trends in student population growth or decline in attendance area of the school or schools which the county designates to receive the students affected for the previous 10 years;

3.2.a.1.C.1. population characteristics, such as birth and death rates and age composition of population for the previous ten years, as provided by the most recent Census data for the county;

3.2.a.1.C.2. projections of enrollment, by grade and school, in the affected attendance area, for the next ten years; and

3.2.a.1.C.3. explanation of the projection method utilized addressing the relationship between the most recent Second Month Report, the Second Month Reports for the previous three years, and the most recent census data for the county.

3.2.b. Facilities.

3.2.b.1. Maps showing the school(s) targeted for closure or consolidation and the school(s) that the county designates to receive the students with mileage indicated between and among schools affected.

3.2.b.1.A. The map shall include a legend indicating the grade configuration, student enrollment, and utilization percentage for each school on the map.

3.2.b.2. Written description of the physical condition of the school targeted for closure or consolidation and the school or schools which the county designates to receive the students. This description shall include age, number of buildings, general condition, adequacy of structural, electrical, and mechanical systems to provide a safe and healthful environment.

3.2.b.3. Evaluation of the school targeted for closure or consolidation and the school or schools that the county designates to receive the students in regard to the school(s) adaptability to the present and proposed educational programs, and the provisions of related student services.

3.2.b.4. Measure of the enrollment and utilization of the school(s) targeted for closure or consolidation and the school(s) which the county has designated to receive the students. The School Building Authority of West Virginia's (SBA) Worksheet on Building Program Utilization shall be submitted.

3.2.b.5. Comparison of the school(s) targeted for closure or consolidation and the school(s) which the county has designated to receive the students in regard to providing the required services and barrier-free environments to students with disabilities.

3.2.b.6. Elaboration on the effect the proposed school closing or consolidation will have on the school system's future plans regarding grade configuration, educational programs, and facility requirements.

3.2.b.7. Elaboration on the planned facility additions, renovations, or replacements that are required by the county to accommodate the proposed closing and consolidation.

3.2.b.8. Elaboration on the future use or disposal of facilities designated by the county for closure.

3.2.b.9. Attachment of the most recent SBA facility evaluation form for each school affected and an updated form if the most recent SBA facility evaluation form is five years old or older.

3.2.c. Finance.

3.2.c.1. Itemization of the anticipated cost or savings the county will experience in all areas as a result of the proposed school closure or consolidation. Such itemization shall be in the form of a table indicating the following:

3.2.c.1.A. the current annual cost at the school(s) to be closed and for the receiving school(s), if applicable, for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items;

3.2.c.1.B. the anticipated total annual cost at the school(s) designated by the county to be

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receiving students after acceptance of the new students for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items; and

3.2.c.1.C. the net cost or savings of the school(s) to be closed and the school(s) designated by the county to be receiving students for: a) utilities, b) personnel, c) maintenance, d) transportation, e) other factors as deemed relevant by the county superintendent, and f) the total cost of the above-listed items.

3.2.c.2. Cost of any renovation or addition resulting from the proposed school closure or consolidation, including all proposed funding sources.

3.2.c.3. Five-year history of the county's unrestricted general current expense fund balance and that balance as a percentage of the county's approved levy estimate.

3.2.d. Personnel. An analysis of the effect the proposed school closure or consolidation will have on professional and service personnel. The analysis shall include, at a minimum, the following data regarding the anticipated increases or decreases in employment as a result of this proposed closure or consolidation:

3.2.d.1. number service personnel currently employed at the affected school(s);

3.2.d.2. number professional personnel currently employed at the affected school(s);

3.2.d.3. number of service personnel that are anticipated to be employed at the affected school(s) upon the completion of the closure or consolidation;

3.2.d.4. number of professional personnel that are anticipated to be employed at the affected school(s) upon the completion of the closure or consolidation;

3.2.d.5. the anticipated net change in service personnel due to the proposed closure or consolidation including any decrease that will occur through attrition or reduction in force; and

3.2.d.6. the anticipated net change in professional personnel due to the proposed closure or consolidation including any decrease that will occur through attrition or reduction in force.

3.2.e. Transportation. Explain any negative variances of 126CSR172, Policy 6200, Handbook on Planning School Facilities (Policy 6200), section 202.02, and the effects the variances may have on transportation. Provide the following bus route data and travel times:

3.2.e.1. list the current travel time by bus route for students in the communities of the schools planned for closure or consolidation and the estimated increase or decrease in travel time as a result of the closure; and

3.2.e.2. list all anticipated bus routes after the proposed closure or consolidation with the estimated total one-way travel time for each route. Clearly identify any bus routes that exceed the recommended travel times and any routes which will require a waiver of W. Va. 126CSR92, Policy 4336, West Virginia School Bus Transportation Regulations, Procedures, and Specifications for the Design and Equipment of School Buses.

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3.2.f. Educational Program. Complete a projected educational program improvement analysis which includes a statement of assurance that the following have been considered:

3.2.f.1. W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities,

3.2.f.2. W. Va. 126CSR42, Policy 2510, Assuring the Quality of Education: Regulations for Education Programs,

3.2.f.3. W. Va. 126CSR44 et al., Policy 2520, Content Standards and Objectives for West Virginia Schools,

3.2.f.4. Policy 6200, and

3.2.f.5. Policy 6204.

3.3. The county must provide notice for the public hearing which shall be advertised through a Class III legal advertisement for three weeks prior to the date of the hearing in a newspaper in general circulation in the locality of any school to be closed or consolidated and in the locality of any school that has been designated by the county to receive students from the schools to be closed or consolidated. The notice also shall be posted in all schools as provided in section 3.3.5 at least 30 days prior to the date of hearing.

3.3.a. The notice shall contain the time and place of the hearing and the proposed action of the county.

3.3.a.1. The hearing shall not be scheduled to begin before 9:00 a.m. nor continue beyond 11:00 p.m.

3.3.a.2. The hearing may recess, to continue on dates designated and announced by the county just prior to the hearing recess, to be continued day-to-day until concluded.

3.3.a.3. Primary consideration should be given to conducting the hearing at the school facility proposed to be closed.

3.3.b. The notice shall contain the statement that the hearing location is subject to change if, at the time the meeting is called to order, it is determined that the meeting location is of insufficient size.

3.3.b.1. Consideration should be given to the accessibility of the location, parking at the location, occupant capacity, and other similar factors.

3.3.c. The notice shall contain a statement regarding an alternate date should the hearing be unable to be held on the scheduled date due to inclement weather or other factors beyond the control of the county.

3.3.d. The notice shall contain a date certain deadline for the submission of written material to be reviewed by the county, in no event later than the close of the public hearing to provide the county time to consider the material before the vote.

3.3.e. A copy of the notice shall be posted at all schools, bus garages, and maintenance areas in the county in conspicuous working areas, for all professional and service personnel to observe.

3.4. Counties must complete the procedures outlined below for all proposed school closures or consolidations. If the county will be applying for SBA funding, the procedures must be completed before the SBA will consider a project for funding, as further outlined in section 6. If the county will be utilizing local funding for a construction project related to the closure or consolidation, the procedures must be completed prior to the initiation of construction. For all other closures and consolidations, counties must complete the procedures on or before December 31st of the calendar year prior to the calendar year in which the closures or consolidations are to be effective.

3.4.a. Conduct a public meeting/hearing, in the county wherein the proposed action is to occur, which meets the following criteria:

3.4.a.1. the hearing shall be scheduled to last a reasonable amount of time, but in no event shall it be scheduled to begin before 9:00 a.m. nor continue beyond 11:00 p.m., but may recess and continue from day-to-day until concluded;

3.4.a.2. at least the county superintendent and a quorum of the county board members from the county wherein an affected school is located shall attend the public hearing;

3.4.a.3. members of the public are encouraged to attend, submit statements and testimony, and question county school officials at the public hearing;

3.4.a.3.A. In the interests of time and efficiency, oral statements may be limited in duration to a period of not less than three minutes each and may be supplemented with written comments, timely submitted, in accordance with the notice deadline as outlined in section 3.3.4, which shall not be included in the calculation of the time limitation.

3.4.a.3.B. Responses by the county superintendent or other designated school officials may occur during individual oral presentations, or at the conclusion of the individual's oral presentation, and shall not be included in the calculation of the time limitation as outlined above.

3.4.a.4. Separate hearings shall be held for each school closed or consolidated and shall also be held for each school that has been designated by the county to receive students from the schools to be closed or consolidated;

3.4.a.5. More than one hearing may be held during any one day;

3.4.a.6. The hearing shall be held in a facility of sufficient size to accommodate all those who desire to attend, subject to the provisions in section 3.3.2; and

3.4.a.7. If, at the time the hearing is called to order, it is determined by the county that insufficient space is available to accommodate all those who desire to attend, the hearing shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county shall cause the new meeting location to be posted at the original meeting location.

3.4.b. Receive and review findings and recommendations, timely submitted in accordance with the

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notice deadline as outlined in section 3.3.4, from any LSIC representing an affected school.

3.4.c. Receive and review copies of any other written submissions and statements, timely submitted, in accordance with the notice deadline as outlined in section 2.3.4.

3.4.d. After all above provisions have been completed, counties must take a formal vote on the school closure(s) or consolidation(s).

3.4.d.1. This vote may be at the conclusion of the final public hearing, or

3.4.d.2. This vote may be at a separate duly scheduled and noticed meeting of the county board of education.

3.5. When more than one school is proposed to be closed in the county:

3.5.a. a separate hearing shall be conducted for each school to be closed; and

3.5.b. the vote on the school closing(s) shall not be conducted until the conclusion of each and every school closing hearing as described in section 3.4.1.

3.6. After the vote and following compliance with sections 3.4 and 3.5, and prior to the implementation of any school closure or consolidation and following compliance with all statutory and regulatory provisions, the county must file a request for school closure and/or consolidation with the WVBE for approval and this request must:

3.6.a. be signed by the county superintendent and give the date the action was taken by the county;

3.6.b. contain assurances that applicable sections of the W. Va. Code §18-5-13 and §18-5-13a, and Policies 6200 and 6204 have been addressed;

3.6.c. contain justification for the proposed consolidation or school closing. This justification must be supported by supplemental data and information pertinent to the following subjects: enrollment, facilities, finance, personnel, transportation, and educational programs, as described above;

3.6.d. contain documentation of all hearings, motions, written public comments, a synopsis or transcript of verbal public comments, and other actions concerning the proposed school closings and consolidations; and

3.6.e. contain proof that the hearings were properly advertised with a class III legal advertisement. Such proof can be satisfied with:

3.6.e.1. a notarized letter from the county's qualified newspaper(s) for legal notices, as defined by the West Virginia Secretary of State, that specifically states the three dates in which the newspaper ran the county's public hearing notification; or

3.6.e.2. a scan or download for each of the 3 required legal advertisements from the county's qualified newspaper(s) for legal notices, as defined by the West Virginia Secretary of State, where the full legal notification and date of publication is provided and legible.

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3.6.f. contain a statement identifying if the proposed school closing or consolidation was included in the county's approved CERP; and

3.6.g. contain a statement identifying if the proposed school closing or consolidation is contingent upon receiving funding from the SBA.

3.7. If the county's approved CERP did not contain the proposed closure or consolidation, the county must also submit a request to amend their CERP. Such request shall include all required CERP amendment forms.

§126-176-4. Emergency School Closure.

4.1. The State Superintendent of Schools may make a declaration that there is a need for an emergency school closure.

4.2. Once the State Superintendent of Schools has declared a need for an emergency school closure, consideration should be given to the following when determining the school(s) to which the displaced students will be transferred.

4.2.a. Educational program. Educational opportunities are equal or greater for students at the school designated by the county to be a receiving school.

4.2.b. Transportation. Proposed routing schedule does not result in undue time in transit for students according to recommended age-appropriate travel times.

4.2.c. Exceptional students. Programmatic offerings and educational spaces are appropriately accessible to students with exceptionalities.

4.2.d. Health/safety. Transfer of students would not result in any health/safety concerns which would adversely affect students and staff.

4.2.e. Capacity. The school designated by the county to be a receiving school has the capacity to adequately house projected enrollment.

4.3. Following the emergency need declaration and transfer of students, the county shall proceed with the school closure procedure as outlined in section 3 and shall include additional data regarding the circumstances giving rise to the emergency in the written reasons and supporting data.

§126-176-5. Assistance.

5.1. Upon request, technical assistance regarding school closures and consolidations shall be provided by WVDE staff.

5.2. Such technical assistance by WVDE staff shall not supplant or replace legal assistance provided by counsel engaged to represent the county.

5.3. It is recommended that counties request said technical assistance from WVDE staff prior to the public posting or dissemination of reasons and supporting data concerning proposed school closings or consolidations.

§126-176-6. Closures Contingent Upon SBA Funding.

6.1. A county that submits a capital improvement funding request to the SBA, which incorporates the closure of a school, shall have said closure approved by the county and WVBE before being eligible for a grant award from the SBA. Rejection of the closure request by the county or WVBE renders the funding request disqualified from the current SBA funding cycle.

6.2. A WVBE-approved closure that is contingent upon the awarding of capital improvement funds from the SBA has an expiration date of two-years from the date of initial approval of the closure by the WVBE to be awarded funding. In such case that the two-year period elapses, and the county has not been awarded SBA funding for the project, the WVBE closure approval becomes null-and-void and the school(s) shall remain in operation.

6.3. A county has the right to void its previously approved school closure at any time before the expiration of the two-years by notifying the WVBE in writing of its intent to keep the school(s) open.

6.4. If a county wishes to close the applicable school(s) after the expiration of the two years, the county shall be required to complete the full closure process as outlined in this policy and to make all necessary data current for consideration.

§126-176-7. Severability.

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

**W. Va. 126CSR176, Policy 6204, School Closures or Consolidations
Comment Response Form**

Comment Period Ends: August 16, 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 6204, School Closures or Consolidations**. 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 |
|---|
| §126-176-1. General. |
| §126-176-2. School Closures. |
| §126-176-3. County Procedures. |
| §126-176-4. Emergency School Closure. |
| §126-176-5. Assistance. |
| §126-176-6. Closures Contingent upon SBA Funding. |

**W. Va. 126CSR176, Policy 6204, School Closures or Consolidations
Comment Response Form**

§126-176-7. Severability.

Please direct all comments to:

Micah Whitlow, Manager
School Facilities Services
West Virginia Department of Education
Capitol Building 6, Room 318
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: micah.whitlow@k12.wv.us
Fax No.: 304.558.8867