



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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10/14/2021 12:09:34 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-003A
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: West Virginia Board of Education Rulemaking Process (1242)
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: 11/15/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Heather L. Hutchens, General Counsel
ADDRESS: WVDE Legal Services, Capitol Bldg. 6, Suite 650
1900 Kanawha Blvd., E, Charleston, WV 25305
EMAIL: hhutchens@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 1242 establishes the procedure for rulemaking by the West Virginia Board of Education (WVBE) in accordance with its supervisory authority as set forth in Article XII, Section 2 of the Constitution of West Virginia and in compliance with W. Va. Code §§18-2-5, 18-2-5a, and 29A-3B-1, et seq.

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

This policy repeals and replaces the prior version of Policy 1242 which was adopted on January 10, 2002, and effective February 9, 2002. The revisions to the policy clarify the WVBE's rulemaking procedures and highlight the process for collaboration with the Legislature. These collaborative expectations have been part of the WVBE rulemaking process in the past, but have never been highlighted in WVBE policy.

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 126CSR3A, Policy 1242.

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 126CSR3A, Policy 1242.

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 126CSR3A, Policy 1242.

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 126CSR3A, Policy 1242.

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 1242, West Virginia Board of Education Rulemaking Process
Executive Summary**

**West Virginia Department of Education
Office of Legal Services**

Policy Cycle: 30 Day Comment Period Adoption of Policy

Policy Process: Revision Repeal and Replace New

Introduction: This policy repeals and replaces the prior version of Policy 1242 which was adopted on January 10, 2002, and effective February 9, 2002. The revisions to the policy clarify the WVBE’s rulemaking procedures and highlight the process for collaboration with the Legislature.

Background: The West Virginia Legislature has set forth minimum requirements for rulemaking for the WVBE in W. Va. Code §§29A-3B-1 through 29A-3B-12, and has set forth specific expectations for collaboration with the Legislative Oversight Commission on Education Accountability (LOCEA) in W. Va. Code §29A-3B-9. These collaborative expectations have been part of the WVBE rulemaking process in the past, but have never been highlighted in WVBE policy.

Proposed Changes: The changes to the policy highlight the WVBE’s collaboration process with the LOCEA.

Impact: Highlighting the WVBE’s interactive process with the LOCEA during the rulemaking process will enhance lines of communication and collaboration.

Action:

- Release for 30 day public comment.
 - Approved by WVBE with effective date of ____/____/20__
-

126CSR3A

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 3A
WEST VIRGINIA BOARD OF EDUCATION RULEMAKING PROCESS (1242)**

§126-3A-1. General.

1.1. Scope. -- This rule establishes the procedure for rulemaking by the West Virginia Board of Education (WVBE) in accordance with its supervisory authority as set forth in Article XII, Section 2 of the Constitution of West Virginia and in compliance with W. Va. Code §§18-2-5, 18-2-5a, and 29A-3B-1, et seq.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §§18-2-5, 18-2-5a, and 29A-3B-1, et seq.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rule. -- This procedural rule repeals and replaces W. Va. 126CSR3A, Policy 1242, State Board of Education Policy Making Process, filed January 10, 2002, and effective February 9, 2002.

§126-3A-2. Rationale.

2.1. Every rule, including any amendment of a rule or repeal of a rule, shall be promulgated by the WVBE in accordance with W. Va. Code §§18-2-5, 18-2-5a, and 29A-3B-1, et seq. and in accordance with this rule. Rules promulgated by the WVBE are also known as policies. Any reference to policy or policies in any WVBE document shall have the same meaning as rule or rules as used herein.

§126-3A-3. Procedures.

3.1. The WVBE shall provide the Legislative Oversight Commission on Education Accountability (LOCEA) with an annual forecast of policies it anticipates promulgating or revising and shall update the forecast monthly.

3.2. Each proposed policy shall be placed on public comment and review for a period of time that extends at least 30 days from the date the proposed policy is filed with the Secretary of State in the state register pursuant to W. Va. Code §29A-3B-4(a).

3.3. Each proposed policy shall be submitted to the LOCEA pursuant to W. Va. Code §18-2-5a and §29A-3B-9.

3.3.a. The LOCEA submission shall contain: 1) the full text of the policy as proposed by the

WVBE and filed with the office of the Secretary of State, with new language underlined and with language to be deleted from any existing policy stricken through but clearly legible; 2) a brief summary of the content of the policy and a description and a copy of any existing policy that the WVBE proposes to amend or repeal; 3) a statement of the circumstances which require the policy; 4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the policy on the state or its residents; 5) a description of stakeholder involvement in the development of the policy; and 6) any other information which the LOCEA may request or which may be required by law.

3.3.b. The LOCEA may, at its discretion, hold public hearings regarding a proposed policy, may request additional information regarding any aspect of the proposed policy, and may appoint a sub-committee to meet with the State Superintendent or designee(s) to further review the proposed policy. The LOCEA review shall include, but not be limited to, a determination of: 1) whether the WVBE has exceeded the scope of its statutory authority in approving the proposed policy; 2) whether the proposed policy is in conformity with the legislative intent of the statute that the policy is intended to implement, extend, apply, interpret, or make specific; 3) whether the proposed policy conflicts with any other provision of W. Va. Code or with any other rule adopted by the same or a different agency; 4) whether the proposed policy is necessary to fully accomplish the objectives of the statute under which the proposed policy was promulgated; 5) whether the proposed policy is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it; 6) whether the proposed policy could be made less complex or more readily understandable by the general public; 7) whether the proposed policy was promulgated in compliance with the requirements of this article and in compliance with any requirements imposed by any other provision of W. Va. Code; and 8) any other matter relating to the proposed policy with which the LOCEA has concern.

3.3.c. After reviewing the proposed policy, the LOCEA may recommend to the WVBE any changes needed to comply with the legislative intent of the statute upon which the policy is based or otherwise to modify the activity subject to the policy, or may make any other recommendations to the WVBE as it considers appropriate.

3.4. Notification of proposed policies also will be sent to interested parties, inclusive of county board of education offices and media outlets at the time each policy is placed on public comment. Proposed policies and directions for submitting comments shall be maintained on the West Virginia Department of Education (WVDE) website.

3.5. All public comments received on a proposed policy will be reviewed by the WVBE and the WVDE prior to the proposed policy's final consideration. A log of all comments received along with a response to each comment shall be maintained by the WVBE and filed with the Secretary of State upon adoption of the policy.

3.6. Upon final adoption of a policy, the WVBE shall submit, to the LOCEA, the final policy along with any amendments.

3.7. All active policies shall be publicly available and maintained on the WVDE website.

3.8. The WVBE may suspend the comment and review period in the case of an emergency as per W. Va. Code §29A-3B-10.

§126-3A-4. Severability.

4.1. 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.

W. Va. 126CSR3A, Policy 1242, West Virginia Board of Education Rulemaking Process

Comment Response Form

Comment Period Ends: November 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 1242, West Virginia Board of Education Rulemaking Process**. 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
§126-3A-1. General.
§126-3A-2. Rationale.
§126-3A-3. Procedures.
§126-3A-4. Severability.

Please direct all comments to:

Heather L. Hutchens, General Counsel
Legal Services
West Virginia Department of Education
Capitol Building 6, Suite 650
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: hhutchens@k12.wv.us
Telephone No.: 1.833.627.2833