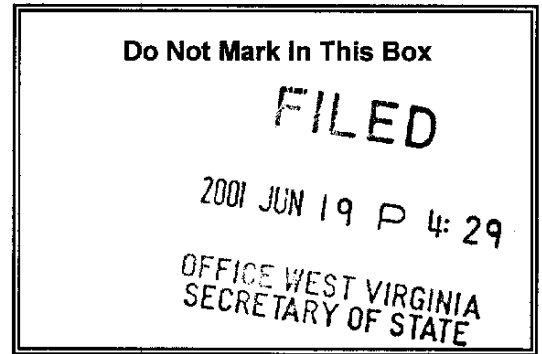


WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #5



NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: WV Secondary School Activities Commission TITLE NUMBER: 127

CITE AUTHORITY: W.Va. Constitution, Article XII, §2, W.Va. Code §18-2-25

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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). WV Code 29-1-1-3(B)

AMENDMENT TO AN EXISTING RULE: YES XX NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

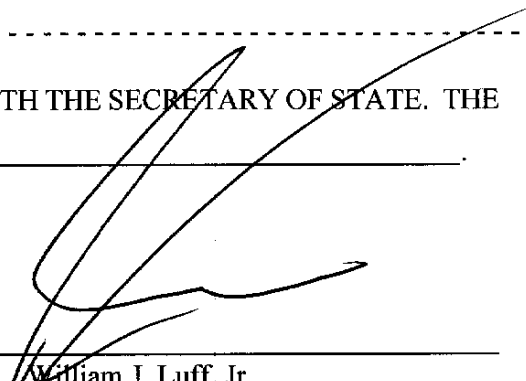
TITLE OF RULE BEING AMENDED: WV Secondary School Activities Commission §127-1-1

Series 1: Constitution

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 20, 2001



William J. Luff, Jr.
Associate State Superintendent

10 TITLE 127
LEGISLATIVE RULES
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION
SERIES 1
CONSTITUTION

FILED

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§127-1-1 General.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

- 1.1 **Scope** - These rules establish the organization and duties of the West Virginia Secondary School Activities Commission.
- 1.2 **Authority** - WV Code §18-2-25
- 1.3 **Filing Date** - June 19, 2001
- 1.4 **Effective Date** - August 20, 2001

§127-1-2 Name.

The name of this organization shall be the West Virginia Secondary School Activities Commission, a voluntary organization. Extracurricular activities of the students in the public secondary schools are controlled by the local county boards of education, pursuant to West Virginia Code article two, chapter eighteen, and authority for the delegation of such control to said Commission is granted by statute.

§127-1-3 Objects.

- 3.1 This Commission through the employment of the instrumentalities hereinafter established shall supervise and control interscholastic athletics and band activities among member schools.
- 3.2 In the performance of these functions it shall be the aim of the Commission
 - (a) To stress the cultural values, the appreciations and skills involved in these interscholastic activities and to promote cooperation and friendship;
 - (b) To limit these interscholastic programs in both character and quantity so that such activities and such events may reasonably be looked upon as promoting the generally accepted objectives of secondary education and as such shall not unduly interfere with nor abridge the regular program of teachers and students in the performance of their regular day to day school duties;
 - (c) To encourage economy in the time that the student and the teacher-personnel devote to these interscholastic activities;
 - (d) To encourage economy in expenses of these interscholastic activities;
 - (e) To discourage long trips for large groups of students;
 - (f) And, to establish minimum standards of conduct for both active and spectator participants, coaches and all other school personnel at all

interscholastic athletic events approved, sponsored or controlled by this Commission.

§127-1-4 Membership.

4.1 The West Virginia Secondary School Activities Commission shall be composed of the principals, or their representatives, of those secondary schools which county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic and band activities of the students in the public secondary schools in their respective counties to said Commission; the principals, or the representatives, of those Catholic secondary schools whose West Virginia Diocesan Board of Education has certified in writing to the Board of Appeals (hereinafter defined) that they have elected to delegate control, supervision and regulation of their interscholastic athletic and band activities of the students in said Catholic secondary schools to said Commission; and the principals or headmasters of those private secondary schools whose governing body has certified that they have elected to delegate control, supervision and regulation of their interscholastic athletic and band activities in their respective schools to said Commission. (Hereinafter in these regulations "secondary schools" means a school consisting only of those grades above the sixth (6th), organized by departments or the seventh (7th) and eighth (8th) grades of a school in which these grades are organized for instruction by departments and which has at least five (5) teachers in these grades - West Virginia Code section two, article nine-a, chapter eighteen. Furthermore, the term "member schools" or any modification thereof refers to a school whose principals or headmaster is a member of this Commission.) Membership is on a voluntary basis and rests in the sound discretion of each county board of education or governing body of the member school.

Membership in the Commission shall be predicated upon accepting the following conditions:

- (a) The principal or his successor is and shall be the sole representative of the school in all matters pertaining to the constitution, bylaws, rules and regulations of the Commission;
- (b) The principal or his successor is and shall be responsible for conducting interscholastic athletic events and band activities of the school in accordance with the constitution, bylaws, rules and regulations of the Commission which have been adopted by the Board of Control of the Commission for the governing of such activities;
- (c) Pay the annual dues charged by the Commission;
- (d) The principal, or headmaster, or the successor of either, shall file a statement with the executive secretary of the Commission agreeing to abide by and support the constitution and the rules and regulations of the Commission.

At the annual meeting of the Board of Control, the executive secretary shall announce the names of the principals or headmasters who have become new members and who have met each of the several qualifications and requirements as defined in these regulations.

4.2 A middle school shall be a school approved by the State Department of Education.

A junior high school shall be a school approved by the State Department of Education.

A senior high school consists of grades nine (9), ten (10), eleven (11) and twelve (12), established by law and approved by the State Department of Education.

- 4.3 A school, through its principal, coach or other official, is not permitted to enter into an agreement with any other school to waive the standards of eligibility of students or waive or change any other requirement established in these regulations.
- 4.4 Any member violating the regulations of this Commission and refusing to abide by the decision of the Board of Appeals or the Review Board shall be subject to the penalties hereinafter set forth. (See §127-6-2 of these regulations.)

§127-1-5 Administration.

- 5.1 The administration of the West Virginia Secondary School Activities Commission shall be vested in the secondary school principals heretofore defined as members and who shall constitute a Board of Control. Said Board of Control shall determine the regulation of interscholastic athletic events and band activities among the schools represented by the member of said Commission and shall have charge of all funds of said Commission, and in order to expedite the regulations of said activities shall delegate and assign to the Board of Appeals hereinafter constituted, and the executive secretary, hereinafter constituted and working through the Board of Appeals, authority to interpret and enforce these regulations. Said Board of Control shall delegate and assign to the Board of Trustees, hereinafter constituted, the power and authority to hold title to and manage the property owned by said Commission. These regulations of said Commission shall be the articles, rules, explanations and interpretations which have been voted upon and approved by a majority vote of the members of the Board of Control present and voting at the annual meeting of said Commission. Fifty (50) members shall constitute a quorum for the transaction of all business at said annual meeting and approved by a majority vote of the members of the Board of Control present and voting at the annual meeting of said Commission.
- 5.2 At all annual or called meetings of the Board of Control of the West Virginia Secondary School Activities Commission each member shall have one vote on each question or proposition under consideration. A member may appoint, by a written statement to the president of said Commission, his assistant principal or other member of his faculty to represent him at meetings of the Board of Control but no such appointment shall absolve the member of his responsibility as defined in these regulations.
- 5.3 The Board of Control of the West Virginia Secondary School Activities Commission shall, at its annual meetings, elect officers of the Commission and define their duties as provided in §127-1-6 of these regulations. The officers so elected shall be members of the Board of Appeals of the West Virginia Secondary School Activities Commission with the powers and duties assigned to it by §127-1-8 of the regulations of said Commission. Said Board of Appeals shall be the executive body of the Commission and shall administer the regulations of the Commission. Further, said Board of Appeals shall enforce the provisions of these regulations through the application of penalties provided under §127-6-2 of these regulations. Adjudication of

disagreements and disputes among members of the Commission shall be one of the chief duties of the Board of Appeals. Such adjudication may, however, be subject to review by the Review Board.

5.4 The Board of Control of the West Virginia Secondary School Activities Commission shall delegate and assign to the Board of Appeals, hereinafter constituted, the power and authority to define, devise and/or create five (5) administrative districts in the State of West Virginia:

(a) Effective July 1, 1971, and until such time as it is necessary to change the boundaries of such districts, the five (5) administrative districts shall be as follows:

(1) First District: Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Marion, Marshall, Ohio, Taylor, Tyler and Wetzel.

(2) Second District: Barbour, Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Monongalia, Morgan, Pendleton, Preston, Randolph, Tucker, and Upshur.

(3) Third District: Boone, Braxton, Clay, Kanawha, Lewis, Nicholas, Putnam and Roane.

(4) Fourth District: Cabell, Jackson, Lincoln, Logan, Mason, Pleasants, Ritchie, Wayne, Wirt and Wood.

(5) Fifth District: Fayette, Greenbrier, Mercer, Mingo, McDowell, Monroe, Pocahontas, Raleigh, Summers, Webster and Wyoming.

(b) Any change in the boundaries of said administrative districts adopted by the Board of Appeals shall be submitted for approval to the Board of Control at its annual meeting. Such adopted change may be remanded to the Board of Appeals for further study and action only by a two-thirds (2/3) vote of the members of the Board of Control present and voting at the annual meeting. If the adopted change in boundaries is not remanded for further study and action, it shall be considered approved.

(c) Any adopted and approved changes in the boundaries of the administrative districts shall not be cause for reducing the length of the regular term of office of an incumbent officer-member.

§127-1-6 Officers and Duties.

6.1 There shall be five (5) elected officer-members of the West Virginia Secondary School Activities Commission, each of whom shall be a principal of a secondary school in West Virginia.

(a) The elected officer-members shall constitute the Board of Appeals of the West Virginia Secondary School Activities Commission.

(b) One (1) officer-member shall be elected to a regular term each year at the annual meeting of said Commission. The runner-up candidate in each election shall be declared the alternate-officer-member and shall serve any portion of the officer-member's unexpired term which may occur. If the alternate-officer-member is not thus determined, then a separate

election shall be held to do so. Said officer-member and alternate-officer-member shall be from the same administrative district.

(c) The regular term of an elected officer-member shall be a period of five (5) years and said term shall begin immediately following the close of the annual meeting in which he was elected.

(d) An elected officer-member shall be eligible to serve two (2) regular five (5)-year terms in succession. Upon completion of the two successive terms, a former officer-member shall not be appointed to nor elected to fill a vacancy of an unexpired term during the five (5)-year period immediately following the expiration of his regular term. An alternate-officer-member who serves more than one (1) year of an officer-member's unexpired term shall be eligible to be elected to the next succeeding regular five (5)-year term.

(e) The election shall be by ballot when more than one (1) candidate from the same administrative district in West Virginia is nominated for officer-member. When more than two (2) candidates from the same administrative district are nominated for officer-member, the balloting shall continue until one (1) of said candidates shall receive a majority of the votes cast. The candidates with the least number of votes on each ballot shall be dropped from each subsequent ballot.

(f) At the first meeting of the Board of Appeals following the close of the annual meeting of the Commission said Board of Appeals shall designate one (1) of its officer-members to serve as president and one (1) to serve as vice president.

6.2 Two (2) or more members serving as principals of secondary schools located in the same administrative district of West Virginia shall be ineligible to serve as officer-members at the same time.

6.3 The term of an officer-member shall end immediately upon his agreement to accept a position that would make him ineligible to hold office in this commission.

6.4 The annual honorarium of the officer-members shall be three hundred (\$300.00) dollars each.

6.5 The executive secretary shall act as treasurer and shall pay out monies from the funds belonging to this Commission in payment of bills only upon order of the president.

6.6 The president shall furnish bond in the amount of twenty thousand (\$20,000) dollars. The Executive Secretary shall furnish bond in the amount of one hundred thousand (\$100,000) dollars. The premium for both of these bonds shall be paid by the Commission.

6.7 The officers of the Commission may submit questions for discussion by mail and ascertain sentiment of the schools by means of questionnaires. No vote to alter these regulations shall be taken except at the annual meeting of the Commission, except that these regulations may, in case of emergency, with the consent of the Board of Appeals, enact and adopt all necessary rules and regulations, whether by deletion, amendment, revision or addition, and which emergency rules and regulations shall be submitted at the next annual meeting of the Commission for formal adoption or rejection.

§127-1-7 Meetings.

- 7.1 The annual meeting of the West Virginia Secondary School Activities Commission shall be planned by the executive secretary and the Board of Appeals of said Commission.
- 7.2 Special meetings may be called by order of the president of the Commission. Fifty (50) principals constitute a quorum to transact business.

§127-1-8 Board of Appeals.

- 8.1 The Board of Appeals shall have authority to administer the regulations of the West Virginia Secondary School Activities Commission.
- 8.2 The State Superintendent of Schools or his representative designated to act in his stead, a representative from the State Board of Education, a representative selected by the West Virginia School Boards Association, a representative selected by the West Virginia School Administrators Association and a representative selected by the West Virginia Athletic Directors Association shall serve as appointive members of the Board of Appeals. Said appointive members shall be accorded full voting privileges but shall be ineligible to be elected or to serve as an officer of the West Virginia Secondary School Activities Commission.
- (a) The president of the Association of Secondary School Principals shall serve as an ex-officio member of the Board of Appeals. However, serving the one (1)-year term as an ex-officio member shall not render said member ineligible to be elected to a regular five (5)-year term as an officer-member provided he is otherwise eligible.
- 8.3 The Board of Appeals shall have authority to appoint an Executive Secretary, except as hereinafter provided, and such additional assistance as may be necessary to assure efficient functioning of the work of the West Virginia Secondary School Activities Commission. Furthermore, said Board of Appeals shall have authority to fix and to pay salaries to the Executive Secretary and to other staff personnel appointed to assist said Executive Secretary. The Board of Appeals shall also have authority to devise a plan of retirement benefits for the Executive Secretary and other full-time staff personnel appointed to assist said Executive Secretary.
- (a) At least one of the staff personnel appointed to assist the Executive Secretary shall have the status of Assistant Executive Secretary. The appointment of said Assistant Executive Secretary shall be made by the Board of Appeals only upon the nomination and recommendation by the Executive Secretary. In case the Board of Appeals refuses to appoint the person so nominated, the Executive Secretary shall nominate and recommend another person and submit the name to the Board of Appeals at such time as said Board may direct. The length of the contract term of office of the said Assistant Executive Secretary shall be the same as that prescribed for the Executive Secretary in subsections 11.1 and 11.2 of these regulations. The said Assistant Executive Secretary shall not be removed during the contract term of office except for just and reasonable cause as prescribed in subsection 11.3.
- (b) All other staff personnel to assist the Executive Secretary shall be recommended by the Executive Secretary before being considered for employment by the Board of Appeals.

- (c) The Board of Appeals will annually evaluate the performance of the Executive Secretary. It shall be the responsibility of the Executive Secretary to evaluate assistant executive secretaries. Part of the evaluation process would include, by the determination of the Executive Secretary, confidence/non-confidence. If there is a no-confidence, the Executive Secretary must submit a list of areas of concern to be addressed. From said list, a plan of improvement would be devised by the Executive Secretary. Failure on the part of the assistant secretary to comply to the plan of improvement could result in dismissal.
- 8.4 The Board of Appeals shall have power of appointment to fill vacancies in its membership until the vacancies are filled regularly at the next annual meeting of the Commission.
- 8.5 The Board of Appeals shall have power to decide all cases of eligibility of athletes and participants in band activities. The Board may also exercise discretionary powers it may deem necessary for the furtherance of education and interscholastic athletic events and band activities in the secondary schools of West Virginia.
- 8.6 The Board of Appeals shall appoint Deputy Board Members who will serve during the will and pleasure of the Board of Appeals.
- 8.7 At the request of the Board of Appeals a Deputy Board Member shall investigate matters of eligibility and other violations of the rules and regulations of the West Virginia Secondary School Activities Commission. Said Deputy Board Member shall submit to said Board of Appeals a written report of his findings and recommendations for disposition of the case(s).
- 8.8 The Board of Appeals shall have the power to investigate through the Deputy Board Member, or in such other manner as may be found advisable, matters of eligibility and other violations of rules when the said Board deems it advisable to do so on the basis of information furnished, even though a formal protest is not filed.
- 8.9 The Board of Appeals may divide the state into regions and sections for the purpose of administration and for tournaments or meets of any interscholastic athletic or band activity.
- 8.10 The Board of Appeals shall approve or reject all emergency rules and regulations adopted by the Constitution and Bylaws Committee.
- 8.11 The Board of Appeals shall hold hearings and render decisions in all contested cases.
- 8.12 The Board of Appeals shall have power to resolve disputes concerning the validity of any interscholastic athletic contest.
- 8.13 Five (5) officer-members present and voting at any meeting of the Board of Appeals shall constitute a quorum for said Board of Appeals to transact all business.
- 8.14 The minutes of regular and special meetings of the Board of Appeals will be submitted to principals of all member schools.

§127-1-9 Funds.

9.1 The annual dues for members of this Commission shall be based upon the student enrollment of the school they represent.

(a) A thirty (\$30.00) dollar flat membership fee for all three (3)-and four (4)-year schools on the first one hundred (100) students, or fraction thereof, enrolled in a school.

(b) After the first one hundred (100) students enrolled, the membership will be ten (\$10.00) dollars per one hundred (100) additional students, or fraction thereof, up to one thousand (1,000) students.

(c) For each one hundred (100) students above one thousand (1,000) an additional five (\$5.00) dollars per one hundred (100) students, or fraction thereof, is to be added.

(d) A six (6) year high school shall pay a flat fee of thirty (\$30.00) dollars for grades seven (7) and eight (8) and ten (\$10.00) dollars per hundred (100), or fraction thereof, for grades nine (9), ten (10), eleven (11) and twelve (12) up to one thousand (1,000) students and five (\$5.00) dollars per hundred (100), or fraction thereof, above one thousand (1,000) students.

(e) A thirty (\$30.00) dollar fee is the ceiling for all regular junior high schools and middle schools.

Dues for the year are payable on or before February 1 of each year. Membership in the Commission shall extend from July 1 to June 30 in any year and shall be lapsed if dues are not paid on or before February 15. The enrollment figure to be used to determine the amount of dues shall be the gross enrollment of boys and girls at the close of the second (2nd) month of the current school year. In case a membership has been allowed to lapse, it may not be reinstated until the dues for the year of such lapsed membership, plus a penalty of twenty-five (\$25.00) dollars reinstatement fee, have been paid to the Commission.

9.2 The Board of Appeals may reduce the amount of annual dues of the members for any year.

9.3 The Board of Appeals is authorized to levy entry fees and assessments for the conducting of any interscholastic athletic event or band activity when it is not self-supporting. Fees and assessments from one (1) activity division shall not be used for the support of another.

9.4 The Commission shall determine the expenditures of money but special power is given to the Board of Appeals to use funds as are necessary to carry on its work.

9.5 The fiscal year of this Commission extends from July 1 to June 30. All monies paid as dues to the Commission as well as all monies derived from any contest or other event sponsored by the Commission become quasi public funds and as such shall be subject to an annual audit by the West Virginia State Tax Commissioner. A written summary of the audit shall be a part of the annual report of the executive secretary to the Board of Control.

9.6 In case of dissolution of the West Virginia Secondary School Activities Commission, all funds of said Commission shall be prorated equally and distributed to the County Boards of Education of the members of said Commission. Provided, however, that governing boards of those who become

members of said Commission subsequent to January 1, 1968, shall be entitled to a prorated share of only that portion of the said Commission's fund which have been collected, earned, and accumulated between the inception of such membership and the actual dissolution of said Commission.

§127-1-10 Amendments.

The articles, bylaws, rules and regulations of the West Virginia Secondary School Activities Commission may be amended as provided in the sections immediately following. Provisions for adoption of emergency rules and regulations are made in subsection 6.7 and subsection 8.10 of these regulations. Before any proposed amendment or regulation other than any emergency rule or regulation becomes effective, it shall be approved by a majority vote of the members of said Commission present and voting at an annual or called meeting.

- 10.1 A Constitution and Bylaws Committee, consisting of five (5) members of the Commission, shall be appointed by and shall serve during the will and pleasure of the Board of Appeals. Said Board of Appeals shall designate one (1) of the members so appointed to serve as the chairman of such committee.
- 10.2 The Board of Appeals shall give due consideration to maintaining a fair balance of representation of a secondary school as defined in subsection 4.2 of these regulations when making new appointments to the Constitution and Bylaws Committee. However, an incumbent member of said committee shall not be ruled ineligible to continue to serve on said committee solely because he/she becomes principal of a secondary school different from that from which he/she was originally appointed.
- 10.3 It shall be the function and purpose of the Constitution and Bylaws Committee to provide continuity and cohesion in the rules and regulations governing the interscholastic athletic and band activity programs in West Virginia. Further, it shall be the function and purpose of the Constitution and Bylaws Committee, in cases of emergency and with the consent of the Board of Appeals, to enact and adopt all necessary interim rules and regulations, whether by deletion, amendment, revision or addition and which emergency rules and regulations shall be submitted for formal adoption or rejection at the next annual or called meeting of the West Virginia Secondary School Activities Commission.
- 10.4 Expenses for authorized meetings of the Constitution and Bylaws Committee shall be defrayed from the funds of the West Virginia Secondary School Activities Commission.
- 10.5 Proposed changes to these regulations may be submitted by any member of the West Virginia Secondary School Activities Commission. Such proposed changes, whether by revision, addition or deletion, shall be postmarked or received by the WVSSAC office by January 15 of each year in order to permit the Constitution and Bylaws Committee to study such proposed changes and to submit them, by mail, to the membership thirty (30) days prior to the annual meeting of said Commission.
- 10.6 At the annual meeting of the West Virginia Secondary School Activities Commission each, and only each, such proposed change received by the Constitution and Bylaws Committee, and those interim emergency rules and regulations enacted by the said Committee shall be presented to the membership of said Commission for discussion and formal adoption or

rejection. Said Committee may accompany each presentment with an explanation of the effect of said proposed change upon present rules and objectives of the Commission. Said Committee may also recommend adoption or rejection of said proposition.

- 10.7 The president of the Commission shall appoint a parliamentarian to serve at the meetings of the Commission to decide questions of procedure during said meetings.
- 10.8 An amendment to the regulations of the West Virginia Secondary School Activities Commission shall not become effective until July 1 immediately following the annual meeting at which such amendment was adopted and such adoption is formally approved by the West Virginia State Board of Education.
- 10.9 Nothing in these regulations shall be construed as limiting or in any way effecting the validity of emergency rules and regulations which have been duly approved by the Board of Appeals in accordance with subsection 6.7 of these regulations. Emergency rules and regulations will be effective upon the date they are filed with the Secretary of State of the State of West Virginia and remain in effect until the next meeting of the Commission.

§127-1-11 Executive Secretary.

- 11.1 The Board of Appeals shall employ the Executive Secretary and Assistant Executive Secretary. At the discretion of the Board of Appeals these positions will be given from one-year to four-year contracts. These contracts will be re-negotiated at their conclusion. If new contracts are not negotiated, people in these positions will be notified in writing six months prior to the end of the contract period. A letter to this effect shall be sent to the President of the West Virginia Association of Secondary School Principals.
- 11.2 If a vacancy occurs in the office of the Executive Secretary or Assistant Executive Secretary position during any contract period, the Board of Appeals shall fill such vacancy. The exception will be that if a person serving as a Board of Appeals member or one who has served in that capacity within the preceding one year prior to the vacancy becomes a candidate for one of the positions, the authority to fill the vacancy of said position shall be vested in the Constitution and Bylaws Committee.
- 11.3 The executive secretary shall serve during the will and pleasure of the Board of Appeals but shall not be removed during his/her term of office except for just and reasonable cause. Inefficiency, failure to carry out duties hereinafter set forth shall be deemed sufficient cause for removal of the executive secretary.

§127-1-12 Duties of the Executive Secretary.

- 12.1 The executive secretary shall carry on the work incident to the efficient functioning of the Activities Commission. The general management and administration of the program of officiating for the interscholastic athletic activities sponsored by this Commission is considered one and a proper function of said Commission.
 - (a) He/She shall be responsible for assigning general areas of responsibilities and directing the activities of the assistant executive secretary as such responsibilities relate to the work of said Commission.

- 12.2 The executive secretary shall receive complaints and make investigations concerning the eligibility of secondary school athletes and participants in band activities. He/She shall also receive complaints and make investigations concerning violations of the rules of the Commission.
- 12.3 The Executive Secretary shall render decisions and impose penalties in athletic eligibility and other disputes subject to review by the Board of Appeals. The Executive Secretary shall have the discretion to grant exceptions to the rules based upon previous Board of Appeals decisions on cases of a similar nature. Appeals of rendered decisions by the Executive Secretary shall be filed within thirty (30) days of the decision unless otherwise stated.
- 12.4 It shall be the duty of the executive secretary to make a full and complete written report to the county board of education regarding any disciplinary action taken by the Board of Appeals against a member school which is located in the county in which the said board of education has jurisdiction.
- 12.5 The executive secretary shall attend state meetings of the West Virginia Secondary School Principals Association and report, when requested by the principals, on the work of his/her office.
- 12.6 The executive secretary shall attend the meetings, when practicable, of the National Federation of State High School Associations and bring to the attention of the Commission and the Board of Appeals reports from the national meeting.
- 12.7 The executive secretary shall devote his/her full time to the work assigned to him/her by the Board of Appeals. He/She shall hold no other remunerative office or position. He/She shall not officiate at any interscholastic contest.
- 12.8 The executive secretary shall represent West Virginia in conferences and controversies involving other states.
- 12.9 The executive secretary shall exercise all rights and privileges pertaining to eligibility and to representation with the National Federation of State High School Associations granted to members by the Board of Appeals and Principals by these regulations.

§127-1-13 Review Board.

- 13.1 (a) A West Virginia Secondary School Activities Commission Review Board is hereby established.
- (b) Said Review Board shall consist of seven (7) members to be appointed by the West Virginia State Board of Education upon recommendation by the State Superintendent of Schools. No person, other than a county superintendent of schools, and a representative of the West Virginia Athletic Directors Association, shall be appointed or shall serve who is employed by the West Virginia State Board of Education or any county board of education. All members of the Review Board shall be residents of the State of West Virginia.
- (c) Each of the following associations shall be requested to present three (3) nominations to the State Superintendent of Schools for

membership on the Review Board:

- (1) West Virginia Bar Association
- (2) West Virginia School Administrators Association
- (3) West Virginia State Committee of the North Central Association of Colleges and Secondary Schools
- (4) West Virginia State Medical Association
- (5) West Virginia Sportswriter Association
- (6) West Virginia Athletic Directors Association
- (7) West Virginia Retired School Employees Association

- (d) Members of the Review Board need not be members of the association which submitted their names in nomination and shall be appointed for a term of five (5) years. Prior to the expiration date of the term of each member of the Review Board, the respective association will nominate three (3) representatives to the State Superintendent of Schools who shall subsequently recommend one (1) to the West Virginia State Board of Education.
- (e) The term of office of each member of the Review Board will begin upon the acceptance of the appointment and will expire on June 30 of the year in which the term expires.
- (f) The member with the shortest remaining tenure on the Review Board shall serve as its chairman. Each appointed member of said Review Board shall have equal voting privileges.
- (g) In the same manner as prescribed in subsection 13.1(d) of these regulations, the West Virginia State Board of Education shall have power to fill any vacancy which occurs in the membership of the Review Board. Such appointments shall be made at the next regular or called meeting of said Board of Education following the existence of a vacancy and shall be for the unexpired term of the position vacated.
- (h) Members of the Review Board shall serve without pay but shall be reimbursed for actual expenses incident to the performances of their duties upon presentation to the West Virginia State Department of Education an itemized sworn statement thereof. Costs shall be taxed by the Review Board at its discretion, not to exceed the actual expenses incurred, against the party who fails to prevail and the Review Board may, in its discretion, if it so desires, require any appealing party to post security for costs with the State Superintendent of Schools the sum of two hundred (\$200) dollars.
- (i) The Review Board will sit for hearings within a reasonable time after the aggrieved party having a matter for review files an appeal but not longer than thirty (30) days after such appeal is filed, and at such other times as the Review Board may determine, at the State Capitol in Charleston, or in such other place as the Chairman of said Review Board may elect.

13.2 The West Virginia State Department of Education shall make available adequate and competent secretarial services to record the proceedings and transactions of each meeting of the Review Board and to prepare the official written report, required elsewhere in these regulations, on each decision rendered by said Review Board.

13.3 (a) Any decision of the Board of Appeals involving a penalty, protest,

or interpretation of the rules and regulations of this Commission governing interscholastic athletic or band activities may be appealed to the Review Board in the manner hereinafter described. Said appeal may be made by any member of the aggrieved party which is directly affected by the decision of the Board of Appeals and aggrieved by such decision of the Board of Appeals.

- (b) Appeals must be filed with the State Superintendent of Schools of West Virginia within fifteen (15) days after any final decision of the Board of Appeals of the West Virginia Secondary School Activities Commission.
 - (c) Upon receipt of said appeal, the State Superintendent of Schools shall immediately notify each member of the Review Board of said appeal and the chairman of said Review Board who shall forthwith set a date, time and place for hearing and shall immediately notify all interested parties, in writing, of the same.
 - (d) The filing of any appeal shall not stay enforcement nor act as a supersedeas thereto of the prior ruling or decision of the Board of Appeals. However, pending the hearing of any appeal, at its discretion, the Board of Appeals may grant a stay of enforcement upon such terms as it deems proper.
- 13.4 (a) Proceedings for review shall be instituted by filing a petition, in quintuplicate, with the State Superintendent within fifteen (15) days after the date upon which such party received notice of the final order or decision of the Board of Appeals. A copy of the petition shall be served upon the West Virginia Secondary School Activities Commission or its executive secretary and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.
- (b) Within fifteen (15) days after receipt of a copy of the petition by the West Virginia Secondary School Activities Commission, or its Executive Secretary, or within such further time as the Review Board may allow, said Commission or said Executive Secretary shall transmit to such Review Board, the original or a certified copy of the entire record of the proceedings under review, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the said Commission, all Commission staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceedings, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs involved. Upon demand by any party to the appeal, said Commission shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the Review Board within the time provided for in this section, the appellant may apply to the Review Board to have the case docketed, and the Review Board shall order such record filed. Failure of the said Commission to file the record within the time stipulated shall automatically stay the enforcement of the order or decision of the Board of Appeals, in that particular case, and such stay shall continue until such record is filed.
 - (c) Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the cause or set out in the briefs of the

appellant. Errors not argued by brief may be disregarded, but the Review Board may consider and decide errors which are not assigned or argued.

- (d) The review shall be conducted by the Review Board without a jury and shall be upon the records made before the Commission, except that in cases of alleged irregularities in procedure before the Commission not shown in the record, testimony thereon may be taken before the Review Board. The Review Board may hear oral arguments and require written briefs.

13.5 After hearing all evidence and arguments, the Review Board shall render a decision in one (1) of three (3) forms:

- (a) Sustaining the ruling of the Board of Appeals;
- (b) Reversing the ruling of the Board of Appeals; or
- (c) Remanding the matter to the Board of Appeals for further action.

- (a) The Board of Review shall reverse, vacate or modify the order or decision of the Board of Appeals if the substantial rights of the petitioner or petitioners have been prejudiced because of the administrative findings, inferences, conclusions, decisions or orders are

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the Commission;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

- (b) Four (4) members, present and voting, shall constitute a quorum for the Review Board to transact all business.

- (c) A majority vote of those members of the Review Board in attendance at any hearing shall be required to render a decision. Such decision shall be final and binding on all parties concerned.

- (d) Within thirty (30) days from the date of any hearing, the Review Board shall make a written report of its decision, stating briefly therein its reasons for such a decision. Copies of the report shall be mailed to the State Superintendent of Schools, the executive secretary of the West Virginia Secondary School Activities Commission and, upon written request, to other interested parties.

13.6 (a) Nothing in these regulations shall be construed to limit the Board of Appeals in performing its regular duties as provided in the regulations of the West Virginia Secondary School Activities Commission; in making investigations and initiating proceedings against any member of said Commission; in making interpretations of the rules of eligibility of student athletes of band members; or in imposing penalties for the violations of any rules, regulations or bylaws of said Commission.

- (b) §127-1-8.5 of the Constitution, and §127-6-3.2 of these regulations which infer or state that decisions of the Board of Appeals are final are hereby modified only to the extent that such final ruling of the Board of Appeals may be appealed within the time limit in the manner prescribed

elsewhere in these regulations and affirmed, reversed or remanded by the Review Board.

§127-1-14 Rules and Regulations.

The Constitution and Bylaws of the West Virginia Secondary School Activities Commission are the rules and regulations of said Commission.

§127-1-15 Board of Trustees.

- 15.1 The Board of Appeals shall appoint a five (5)-member Board of Trustees. Each trustee shall be a principal of a secondary school in West Virginia and shall serve during the will and pleasure of said Board of Appeals. Two (2) or more members serving as principals of secondary schools located in the same administrative district of West Virginia shall be ineligible to serve as trustees at the same time.
- 15.2 The Board of Trustees and their lawfully appointed successors shall hold title to all real estate and other property owned by the West Virginia Secondary School Activities Commission except as shall be directed otherwise by the Board of Control.
- 15.3 The Board of Trustees shall elect from the membership thereof, to hold office for a term of one (1) year or until a successor shall be elected, a chairman and, if need, requires a vice-chairman, secretary and treasurer.
- 15.4 The Board of Trustees shall serve without pay or honorarium.
- 15.5 If it so elects, the Board of Control shall direct the Board of Trustees to incorporate in accordance with the pertinent laws of West Virginia and in such manner as will fully protect and exempt from any and all legal liability the individual officers and members, jointly and severally, of the West Virginia Secondary School Activities Commission for an account of the debts and other obligations of every kind and description of said Commission.
- 15.6 Should a trustee withdraw from membership of the Commission or be excluded therefrom, his trusteeship therein shall automatically cease from the date of such withdrawal or exclusion.
- 15.7 Should a trustee refuse, within five (5) days from the receipt thereof, to execute a legal instrument relating to any property of the Commission, when directed to do so by the Board of Control or the Board of Appeals, and when all legal requirements have been satisfied with reference to execution, the Board of Appeals may declare his/her membership on the Board of Trustees vacated.
- 15.8 The Board of Control and/or the Board of Appeals may direct the trustees with respect to the purchase, sale, mortgage, encumbrance, construction, repairing, remodeling and maintenance of any and all property, real and personal, as may be committed to said trustees by said Board of Control or Board of Appeals.