

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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SECRETARY OF STATE

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

AGENCY: Secondary Schools Activities Commission TITLE NUMBER: 127

CITE AUTHORITY: WV Code 18-2-25

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE XXX
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

WV Code 29A-1-3(c)

AMENDMENT TO AN EXISTING RULE: YES XX, NO _____

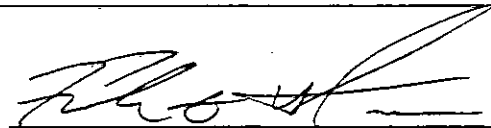
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 4

TITLE OF RULE BEING AMENDED: Violations of the Rules

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS July 14, 1987



SERIES ~~488~~ 4

VIOLATIONS OF THE RULES

***09 Section 127-6-1 GENERAL**

1.1. Scope -- These rules govern the procedures for protests, contested cases and waiver of rules.

1.2 Authority -- W.Va. Code Section 18-2-25

1.3 -- Filing Date --

1.4 Effective Date -- ~~July 1~~, 1987

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 SECRETARY OF STATE

***09 Section 127-6-2 - Powers of the Board of Appeals to Impose Penalties**

2.1 - All violations of rules and questions of dispute are within the power of the Board of Appeals to investigate, through the Executive Secretary, or other authorized person or persons, and to impose such penalties as are prescribed elsewhere in this Constitution and Bylaws and as listed below.

2.2 - If the Board of Appeals finds a school guilty of violating the provisions of this Constitution and Bylaws, said Board of Appeals has the power to:

- (a) Declare the school ineligible for championship honors or other activities for the current year in the activity in which the offense occurred.
- (b) Place the school on probation for a period of time not to exceed 365 days from date of such finding. Such probation may include the loss of voting rights for the member and/or the loss of the privilege of the member school to participate in any or all interscholastic events which are sanctioned, controlled or sponsored by this Commission, and/or the imposition of other restrictive measures as the Board of Appeals may deem advisable.
- (c) Assess such fines as are deemed necessary and just.
- (d) Impose such other additional penalties as may seem justifiable in the particular case considered.

***09 Section 127-6-3 - Method for Protests - Deputies**

3.1 - If charges against any member of the Commission cannot be satisfactorily resolved by the Deputy Board Member in the region in which such charges originate, then the charges shall be submitted in writing to the Executive Secretary of the Board of Appeals.

3.2 - If the Executive Secretary is unable to resolve the charges in a manner satisfactorily to the schools concerned he shall submit the protest to the Board of Appeals and the decision of said Board shall be final except as provided in Section 127-1-13.3(a) of the Constitution.

3.3 - In no case shall a protest be heard by said Board unless the principal bringing the charges notifies in writing the principal of the school being protested. A copy of such notification shall accompany the protest sent to the Executive Secretary.

3.4 - The principal of a school against which charges have been preferred shall be permitted to appear before the Board of Appeals in defense of his school if he so desires.

***09 Section 127-6-4 - Method of Protests - Executive Secretary**

4.1 - If the Executive Secretary has reason to believe that any member of the West Virginia Secondary School Activities Commission has or is violating the rules of the Commission he shall make such investigation as he deems necessary to determine the innocence or guilt of the suspected member.

4.2 - The Executive Secretary shall then report his findings to the principal of the offending school and set a time and place for a meeting with the principal of the school, at which meeting the principal shall be permitted to submit any pertinent evidence in defense of his school.

4.3 - If the principal is not then satisfied with the decision of the Executive Secretary, he may request a hearing before the Board of Appeals at such time and place as is convenient for both the principal and the Board..

4.4 - In no case shall the Board of Appeals hear charges and render a decision unless the principal is given an opportunity to appear in defense of his school. After all evidence has been submitted the Board of Appeals shall render a decision which shall be final except as provided in *09 Section 127-1-13.3(a) of the Constitution.

***09 Section 127-6-5 - Method of Protests - Contested Cases**

5.1 - Commencement of an appeal in a contested case by an aggrieved party hereinafter named the petitioner, shall be instituted by the filing of a verified petition which shall contain:

- (a) The name and address of the petitioner.
- (b) The interest of the petitioner.
- (c) A statement of facts.
- (d) A statement of jurisdiction.
- (e) A designation of the applicable rule or rules involved.
- (f) An assignment of errors relied upon.
- (g) A statement of the relief requested.

5.2 - Petitions for appeal shall be served upon the West Virginia Secondary School Activities Commission by registered or certified mail.

5.3 - The Executive Secretary, or any other interested party, may file an answer, but failure to file an answer will be interpreted as a denial of the allegations contained in the petition. If they elect to file an answer, it shall contain the following:

- (a) Allegation of facts with denials, additional facts or other pertinent data.
- (b) A statement of other applicable rules and statutes.
- (c) A statement of objections, if any, to the parties or other portion of the petition.
- (d) Designation of other interested parties.

5.4 - All answers shall be filed with the Board of Appeals within five (5) days after receipt of the petition for appeal and shall be served upon the petitioner in the same manner as required in subparagraph 127-4-5.2 above.

5.5 - The Board of Appeals may at its election hold a pre-hearing conference with the parties to define the issues and to consider the informal disposition of such appeal without further hearing.

5.6 - In the event that the parties are unable to dispose of the issues without a hearing or if the Board of Appeals elects to proceed without a pre-hearing conference, the Executive Secretary shall notify all parties by certified mail, return receipt requested, of the date, time and place set for a hearing on the appeal. The notice shall be given at least seven (7) days in advance of the time set for the hearing and shall contain a short and plain statement of the issues involved. Said hearing shall be conducted in conjunction with a regularly scheduled meeting of the Board of Appeals. In this event, costs for such a meeting shall not be taxed against the Petitioner(s).

5.7 - The matter may be heard at a special meeting of the Board of Appeals provided the Petitioner(s) agree in writing to pay all costs incidental to such meeting. Such costs shall not exceed the actual expenses incurred. The Board of Appeals, in its discretion, may require the Petitioner(s) to post adequate security for such costs with the Executive Secretary.

5.8 - If the Petitioner(s)' appeal should prevail at the special meeting of the Board of Appeals or at a subsequent hearing before the Review Board, the security deposit or the posted costs shall be returned to the Petitioner(s).

5.9 - All parties to any appeal may represent themselves or be represented by an attorney licensed to practice law in the State of West Virginia.

5.10 - Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to evidentiary offers shall be noted in the record. Any party to any such hearings may vouch the record as to any excluded testimony or other evidence.

5.11 - All evidence, including papers, records, Commission staff memoranda, and documents, in the possession of the Commission, of which it desires to avail itself, shall be offered and made a part of the record in the case. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.

5.12 - Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

5.13 - All of the testimony and evidence of any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The Board of Appeals shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all Commission staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purpose of rehearing or review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default.

***09 Section 127-6-6 -- Review Board**

6.1 - Any decision of the Board of Appeals involving penalty, protest or interpretation of the rules and regulations of this Commission 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.

6.2 - Appeals must be filed with the State Superintendent of Schools of West Virginia within fifteen days after any final decision of the Board of Appeals of the West Virginia Secondary School Activities Commission.

6.3 - 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.

6.4 - 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 on any appeal, at its discretion, the Board of Appeals may grant a stay of enforcement upon such terms as it deems proper.

6.5 - Proceedings for review shall be instituted by filing a petition, in quintuplicate, with the State Superintendent of Schools within fifteen 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.

6.6 - Within fifteen 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.

6.7 - 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.

6.8 - 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.

6.9 - After hearing all evidence and arguments, the Review Board shall render a decision in one of three forms: (1) sustaining the ruling of the Board of Appeals; (2) reversing the ruling of the Board of Appeals; or (3) remanding the matter to the Board of Appeals for further action. 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 order are (1) in violation of constitutional or statutory provisions; or (2) in excess of the statutory authority or jurisdiction of the Commission; or (3) made upon unlawful procedures; or (4) affected by other error of law; or (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.

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

6.11 - 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.

6.12 - 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.

6.13 - Nothing in this Article shall be construed to limit the Board of Appeals in performing its regular duties as provided in the Constitution and Bylaws 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, cheerleaders or band members; or in imposing penalties for the violations of any rules, regulations, or bylaws of said Commission.

6.14 - The Constitution *09 Section 127-1-8.5 and Rules *09 Section 127-6-2, *09 Section 127-6-3.2 and *09 Section 127-6-4.4 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 this Article and affirmed, reversed or remanded by the Board of Review.