

EXECUTIVE SUMMARY
WEST VIRGINIA BOARD OF EDUCATION

POLICY NUMBER AND TITLE: Policy _____
West Virginia Secondary School Activities Commission
Proposed Changes in Rules and Regulations

PUBLIC COMMENT PERIOD ENDS: May 26, 2000 **ADOPTED:** _____

BACKGROUND

The majority of public and most private schools in West Virginia belong to the West Virginia Secondary School Activities Commission. Each year, the principals of member schools submit revisions to the rules and regulations. The submitted proposals are presented and voted upon at the annual Board of Control meeting. Any approved changes are then submitted to the West Virginia State Board of Education for their review and approval.

PURPOSE

These amendments are brought forth to keep the West Virginia Secondary School Activities Commission current and updated on changes, trends and problems in the band and athletic programs.

These proposals were distributed for public comment in April and May. The West Virginia Secondary School Activities Commission will present to the Board the comments received for your review at the June meeting.

The West Virginia Secondary School Activities Commission staff, Constitution and Bylaws Committee, and Board of Control respectfully request that the proposed rule changes to the West Virginia Secondary School Activities Commission Rules and Regulations Handbook be approved.

CONTENT

Eleven proposals are being submitted to the State Board by the Secondary School Activities Commission. Each rule change is presented with the whole rule being included. This will help the State Board members understand the significance of the rule change.

The following is a brief summary of the effect of each proposal:

1. Allows sixth grade students to participate in all middle school interscholastic sport teams except football. (Vote: Yes-70 No-25)
2. Allows the WVSSAC to issue Complimentary Courtesy and Identification Cards to the principal and vice-principal of vocational schools which instruct member school students. (Vote: Yes-79 No-22)
3. Allows the WVSSAC to issue Complimentary Courtesy and Identification Cards to retired athletic directors with at least 20 years as a coach, athletic director, or combination of coaching and athletic director experience. (Vote: Yes-93 No-1)
4. Allows 31 baseball games if participating in a tournament with a minimum of four

participating teams. (Vote: Yes-76 No-23)

5. Changes the beginning of the junior high/middle school cheer season to be consistent with other junior high/middle school fall sports. (Vote: Yes-94 No-2)
6. Allows 19 soccer matches if participating in a conference tournament. (Vote: Yes-54 No-38)
7. Establishes rules for junior high/middle school swim teams. (Vote: Yes-64 No-13)
8. Changes the end of the high school volleyball season. (Vote: Yes-102 No-0)
9. Changes the end of the junior high/middle school volleyball season. (Vote: Yes-94 No 0)
10. Allows ninth grade instrumental music students from feeder schools to participate in the marching band program if the feeder school does not offer a marching band program. (Vote: Yes-53 No-35)
11. Changes WVSSAC office notification procedures for appeal cases. (Vote: Yes-104 No-0)

IMPACT

Instruction

None

Leadership

None

Financial

One proposal would result in an increased expense of \$10,000.00. Two other proposals would collectively result in decrease of revenue of \$6,000.00. Specific amount of increase for these proposals are explained on the Fiscal Note Worksheet.

Administrative

Athletic directors/principals will need to be aware of the changes in order to administer their school programs in accordance with the current rules. There is no major change that would impact administration negatively or cause extra administrative work at the school level.

FISCAL NOTE WORKSHEET

(submit 4 copies)

HD NO. _____ DRAFT NO. _____ BILL NO. _____ RESOLUTION NO. _____

SUBJECT WV Secondary School Activities Commission FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2, AND GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG RANGE EFFECT IN ITEM 3.

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$16,000	\$	\$60,000	\$76,000	\$
PERSONAL SERVICES	\$(1) 10,000	\$	\$(1) 60,000	\$(1) 70,000	\$
CURRENT EXPENSES					
REPAIRS/ALTERATIONS	(2) 4,000		(2) 0	(2) 4,000	
EQUIPMENT	(3) 2,000		(3) 0	(3) 2,000	
OTHER					
2. ESTIMATED TOTAL REVENUES	\$0	\$	\$0	\$0	\$

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Proposal 1

If sixth graders are allowed to participate in middle school interscholastic sport teams, there would be an increase of \$10,000 in the cost of catastrophic injury insurance. Currently, the cost of insurance is approximately \$60,000 for six grades; an additional grade would be an increase of \$10,000.

Proposal 2

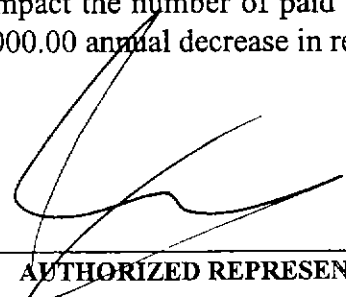
The issuance of additional Courtesy and Identification Cards would impact the number of paid admissions at WVSSAC tournament contests. That would result in an estimated \$4,000.00 annual decrease in revenue.

Proposal 3

The issuance of additional Courtesy and Identification Cards would impact the number of paid admissions at WVSSAC tournament contests. That would result in an estimated \$2,000.00 annual decrease in revenue.

4/6/00
DATE

WV Secondary School Activities Commission
AGENCY



AUTHORIZED REPRESENTATIVE

FILED

APR 18 4 33 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

127CSR6
TITLE 127
LEGISLATIVE RULES
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION

SERIES 6
VIOLATIONS OF THE RULES

§127-6-1 General.

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

1.2 **Authority** - WV Code §18-2-25

1.3 **Filing Date** -

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

§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.

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(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.

§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 satisfactory 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.

§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

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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 §127-1-13.3(a) of the Constitution.

§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.

Proposal 11

Amend §127-6-5 Method of Protests - Contested Cases (pg 39) as follows:

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~~

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~~manner as required in subparagraph 127-6-5.2 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; in writing~~ 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).

Rationale:

This change will update rule in accordance with current WVSSAC office procedures.

5.7 The matter may be heard at a special meeting of the Board of Appeals provided the petitioner(s) agrees in writing to pay all costs incidental to such meeting. Such costs shall not exceed the actual expenses incurred. The Board of Appeals, at 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,

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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.

§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 supersedes 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.

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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.

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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 **§127-1-8.5** and Rules **§127-6-2, §127-6-3.2** and **§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.