



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY

Education

TITLE NUMBER

126

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative Exempt

Yes

W. Va. Code §§29A-3B-

SERIES NUMBER OF RULE BEING AMENDED

**036t seq.; W. Va. Board
of Education v.**

RULE IS LEGISLATIVE EXEMPT

Yes

Hechler, 180 W. Va.

451; 376 S.E.2d 839

(1988)

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)**

**THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE, THE
EFFECTIVE DATE OF THIS RULE IS**

Monday, March 12, 2012

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

**Charles K Heinlein -- 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.**



Title-Series: 126-036



Rule Id: 8449



Document 23394

126CSR36

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 36
INSTRUCTIONAL RESOURCES ADOPTION: NOTICE, REQUEST,
AND INSTRUCTIONS TO PUBLISHERS (2445.41)**

§126-36-1. General.

1.1. Scope. - This legislative rule establishes the procedures for notifying publishers of upcoming adoptions of instructional resources including print materials, electronic resources and systems, kit-based instructional materials and learning technologies by groupings and gives instructions for submitting bids.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-2-5, 18-2A-1 and 18-2A-2.

1.3. Filing Date. - February 9, 2012.

1.4. Effective Date. - March 12, 2012.

1.5. Repeal of former rule. This legislative rule repeals W. Va. §126CSR38, “Textbook Adoption Appeal Process for Publishers” (Policy 2445.412) filed October 17, 1986 and effective October 17, 1986; W. Va. §126CSR33, “Modifications in Textbook Adoption Regulations” (Policy 2445.4) filed December 27, 1982 and effective February 27, 1983; W. Va. §126CSR39, “Selection of Textbooks and Other Instructional Materials: Inter-ethnic in Content, Concept and Illustration” (Policy 2445.43) filed December 27, 1982 and effective December 27, 1982; and amends W. Va. §126CSR36, “Textbook Adoption: Notice, Request and Instruction to Publishers” (Policy 2445.41) filed September 11, 2009 and effective October 13, 2009.

1.6. Summary of policy/legislative/procedural rule. This policy notifies publishers of the requirements for submitting bids for adoption of instructional resources including print materials, electronic resources and systems, kit-based instructional materials and learning technologies by groupings for required school subjects. Dates and adoption groups vary by year, see W. Va. 126CSR35, West Virginia Board of Education (hereinafter WVBE) Policy 2445.40, Groupings for Textbook Adoption for Early Childhood Education, Middle Childhood Education, and Adolescent Education (hereinafter Policy 2445.40). Procedures are given that publishers must follow in submitting bids for the adoption of instructional resources including print materials, electronic resources and systems, kit-based instructional materials and learning technologies. Procedures are included that publishers must follow when requesting an appeal when the West Virginia Instructional Materials Advisory Committee (hereinafter IMAC) did not recommend the inclusion of their instructional materials on the *Official State Multiple List of Instructional Materials* to the WVBE.

§126-36-2. Purpose.

2.1. In accordance with W. Va. Code §18-2A-2, all vendors of new/revised instructional resources including print materials, electronic resources and systems, kit-based instructional materials and learning technologies are requested by the WVBE to submit official samples and related instructional materials to members of the West Virginia Instructional Materials Review Committee (hereinafter IMRC), as provided by action of the said Board in Appendix A of Policy 2445.40.

2.1.a. The notices, requests and instructions set forth herein apply to each program area for each adoption cycle as specified in Appendix A of Policy 2445.40.

2.2. Vendors shall provide to West Virginia schools and counties any financial benefit in the highest amount that has been made available to any other school unit, dealer, county, or depository in any other state. This applies to all services, materials, and equipment as well as loaned or free items for the delivery of any component in the instructional program. (See Section 5.3 Wholesale and Retail/Volume Discount and Standards Prices.)

§126-36-3. Definition.

3.1. The definition "Instructional Resources" includes print materials, electronic resources and systems, kit-based instructional materials, learning technologies, and other materials as defined in W. Va. Code §18-2A-1.

3.2. "Instructional Materials" includes, but is not limited to, systems of instructional materials, or combinations of books (print and/or interactive), books published in multiple series for a single grade, and supplementary materials which convey information to the pupil.

3.3. "Learning Technologies," includes, but is not limited to, applications using computer software, computer assisted instruction, and other computer courseware and magnetic media.

3.4. "Prime Vendor" is one vendor who provides responses to all of the mandatory project components using its own resources and/or resources from other vendors. The contract made with WVBE shall be made only with a prime vendor.

3.5. "Free Items" - Any teacher resource materials necessary for the delivery of the program, except for the teacher's edition/manual.

3.6. "Interactive Instructional Materials" are in electronic format and include, but are not limited to, resources that provide users the ability to select, control, manipulate, and/or contribute content to increase the learning experience.

3.7. "Appeal" is the procedure whereby a publisher contests the findings and decisions of the IMAC by requesting the West Virginia State Superintendent of Schools (hereinafter State Superintendent) conduct a review of the findings and recommendations of the IMAC.

§126-36-4. Applicability

4.1. Instructional resources, including print materials, electronic resources and systems, kit-based instructional materials or any combination thereof submitted by a prime vendor and adopted on the state multiple list must substantially cover the required content and skills for the subject as approved by the WVBE as a primary source of instruction. Adopted materials must be current and information presented accurately; therefore, materials may be updated, substituted or otherwise changed and improved to ensure they are current and accurate. Copyright dates of instructional materials being bid must not be more than three years prior to the adoption period.

4.1.a. Publishers shall provide Lexile Measures for student editions of all materials in all content areas approved for use as primary instructional materials. Publishers shall provide Quantile Measures for all student editions approved as primary instructional materials for mathematics and, when applicable, for all student editions approved as primary instructional materials for science courses within 90 days from the date of notification that the material has been approved for recommendation to the WVBE for inclusion on the Official Multiple Listing of Approved Materials. Successful vendors shall bear the cost of obtaining Lexile and Quantile Measures.

4.2. W. Va. Code §18-2A-2, provides for the request of samples and prices on items deemed appropriate to teach the curriculum. These items must be usable in the public schools as the primary source to deliver the content standards and objectives that have been further refined into generic and specific criteria for the respective subject. Bond requirements for these materials shall be \$10,000.00.

4.3. Supplementary and ancillary materials that are *not* a required part of the instructional program may be bid under the category of "Other Instructional Materials" without review by the IMRC. Bond requirements for these supporting supplementary and ancillary materials shall be \$2,000.00.

§126-36-5. Guidelines.

5.1. Bids and Bid Deposit - All vendors are requested by the WVBE to submit electronic bids on the subjects set forth for an adoption period as specified in Appendix A of Policy 2445.40 beginning on July 1 and ending on June 30 at the conclusion of the period. Each bidder shall, on or before the closing date for receiving of bids, have deposited with the Coordinator of Instructional Resources, West Virginia Department of Education, 1900 Kanawha Boulevard East, Capitol Building 6, Room 603, Charleston, WV 25305-0330, a signed signature sheet and a certified check in the sum of One Thousand Dollars (\$1,000.00) payable to the West Virginia Department of Education (hereinafter WVDE). Such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as is required by law in case of acceptance of all or part of the vendor's bid, and otherwise, reimbursement shall be returned to such bidder after the contract has been made. The bids shall be submitted electronically using the online bid submission form made available on the WVDE website at <http://wvde.state.wv.us/materials>. The signed signature sheet and the certified check for \$1,000.00 made payable to the WVDE shall be enclosed in a sealed envelope on which is

designated "Instructional Materials Bid" and be mailed to the WVDE Coordinator of Instructional Resources. The bids are to be in the hands of the State Superintendent on or before 12 noon, on a date in April of the adoption year as set annually by the WVDE Coordinator of Instructional Resources and listed in the bid packet and on the WVDE website at <http://wvde.state.wv.us/materials>. All bids will be opened in public in a designated room at the WVDE at 10:00 a.m. on a date in April of the adoption year as set annually by the WVDE Coordinator of Instructional Resources and listed in the bid packet and on the WVDE website at <http://wvde.state.wv.us/materials>.

5.1.a. A list of publishers/vendors who submit bids shall be made public. The details of such bids shall be released upon WVBE approval of the state multiple listing.

5.2. Free and/or Loaned Items - Each vendor shall declare on the bid any/all free and loaned items that will be given to any county or school free of charge upon adoption/purchase. Only teachers' editions identified in Section 5.5 may be both bid and/or given to any county or school free of charge. No changes will be permitted after the vendor hearing date and the declaration shall become part of the contract for the adoption period. Substitutions of revised editions shall not alter the original declaration. (See Sections 2 and 5.) Wholesale prices for all ancillary materials, listed free the first year of adoption, will be set, for subsequent years, as of the day of approval by the WVBE. This applies to all vendors, including those using the waiver process.

5.2.a. All items to be loaned or given free, supplementary or otherwise, shall be provided during the review/hearing period for committee members to observe if requested by the Advisory Committee.

5.2.b. The WVBE reserves the right to limit and/or remove the category of loaned and/or free items for any adoption group.

5.3. Wholesale and Retail/Volume Discount and Standards Prices - All prices on the bid shall be firm and must be bonded for the period of adoption. (See Section 2. for financial benefits to schools and counties and Section 5.10 for Substituting Revised Editions.)

5.3.a. Volume Discount and Standard Prices – Anticipated updates and price changes must be included in the original bid. Bids may include per-student, per-computer or other unit price structures. Bids may include subscription price models, such as for web-delivered materials where the cost may be divided over multiple years and paid annually (as opposed to a single payment).

5.4. Exchange Privilege - Vendors shall arrange for the exchange of items, allowing pupils or boards of education an exchange price as liberal as granted on the same items to any county, school, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year, either during the initial purchase year of the adopted materials or the year following the end of the adoption period. If the exchange privilege is granted during the initial purchase year, the lowest net wholesale price shall further be reduced by the amount of exchange.

5.5. Teachers' Editions - Publishers/vendors are required to provide teacher's editions/manuals and/or Teachers Resource Binders (hereinafter TRB) which contain the teacher's edition/manual/curriculum, etc. for counties adopting and purchasing instructional materials at the ratio of one per classroom at the early and middle childhood levels and one per teacher with a minimum of 25 student editions purchased at the adolescent level. Counties, schools, and teachers requesting teachers' editions in excess of this requirement should pay the current bid price. Electronic teacher's editions may be supplied, in lieu of print versions, when digital or online versions of learning technologies or other digital or online instructional materials are adopted.

5.5.a. Any/all item(s) submitted for bid shall not be given away during the period of time beginning with the call for instructional materials and ending at the conclusion of the contract period, except for those items defined in Section 7.

5.5.b. Teachers' editions/manuals and/or TRBs which contain the teacher's edition/manual/curriculum, etc. must be included in the bid for county needs beyond those which are required. The vendor grants each school duplication rights for classroom use only within the limitation(s) of current copyright laws.

5.6. Permission Statements - Successful vendors of student print materials will be required to file permission statements with the National Instructional Materials Accessibility Center (NIMAC), located at the American Printing House for the Blind in Louisville, Kentucky, within 30 days of adoption by the WVBE. The permission statement shall provide for translating adopted materials into Braille, Large Type Editions, audio-recordings, etc. to enable students with disabilities to have usable instructional materials on the opening day of school. The files shall be provided in the National Instructional Materials Accessibility Standard format (NIMAS) for all materials produced after August 18, 2006.

5.6.a. Accessibility Statements – Successful vendors of student non-print materials shall meet student accessibility guidelines. All content must adhere to current W3C guidelines and be Section 508 conformant. All web content must follow the current Web Accessibility Guidelines (WCAG).

5.6.b. Inter-Ethnic Statements – Successful vendors of instructional materials must recognize the pluralistic nature of American society and the contributions of minority and ethnic groups as an inextricable part of the total growth and development of this nation and perpetuate these contributions as an essential part of the American heritage by basing their instructional program on facts.

5.6.c. Therefore, state and local instructional materials committees and individual educators charged with responsibility for the selection of instructional materials to be used in school programs Pre-K-12 shall select only those materials which accurately portray minority and ethnic group contributions to American growth and culture and which depict and illustrate the intercultural character of our pluralistic society.

5.7. Rejection of Bids and/or Free Items - The WVBE reserves the right to reject any and all

bids or any part of a bid or free item and to accept any part of a bid or free item submitted hereunder.

5.8. Direct Shipment - Vendors may ship directly to a county school district, school(s), or dealer appointed by the county, if the county school district or school(s) selects to purchase from a vendor. However, except in the case of learning technologies or other digital content delivered through the Internet, vendors shall make items available to a state approved depository when a county school district or school(s) selects to purchase from a depository. Direct shipment to a county school district, school(s), or county dealers shall require the vendor to bear the costs of shipping, mailing, or transporting, including any other benefit provided to any other county or school in any other state.

5.9. Depository(ies) – County school districts and schools have the option to purchase through a depository at the bid price. Except in the case of learning technologies or other digital content delivered through the Internet, vendors will make their product(s) available for distribution through any WVBE approved depository(ies) that is (are) determined to be qualified to warehouse, manage, and distribute such product(s).

5.9.a. Vendors opting to ship materials through any WVBE approved depository(ies) shall assure that the lowest net wholesale, retail, and exchange prices to county school districts/dealers/schools will not exceed the bid price(s). Shipping costs and/or transportation to county school districts/schools/dealers shall be provided without charge and borne by agreement between the vendor and state approved depository(ies).

5.10. Substituting Revised Editions of Adopted Materials - As stated in Section 5.3, items must be bonded for the period of adoption (not to exceed eight years). Revised editions of previously adopted materials may be substituted at contract prices. Requests must be filed by February 1 or August 1 of each year.

5.11. Contract Price – Beginning the first day of the contract period, the Publisher agrees to supply the public schools of the State of West Virginia with the specific instructional materials at the contract prices hereinafter stated for said instructional materials delivered to the purchaser either directly from the publisher or from the state approved depository. Contractor agrees to: (a) furnish and make available for sale at all times throughout the terms of this agreement, sufficient quantities of the adopted instructional materials to supply the needs of the districts, and (b) pay a delay of delivery charge at the rate of one percent (1%) per day of the undelivered portion of the purchase order that includes major tools, teacher's editions, and any ancillary items included in the contract, if the Contractor fails to deliver within 45 days of the date the purchase order was received by either the publisher or the state approved depository. For those ancillary items that do not have an initial purchase price, the liquidated damages will be assessed based on the replacement value for that item.

5.12. Items Not Manufactured On Time - Alternative programs and new programs that were not manufactured by the close of the committee's formal evaluation shall be considered through the waiver process by county school districts and schools desiring to use same and shall be sold at the lowest net wholesale price in the nation on the date of purchase. Any vendor whose

programs/materials are being initially considered through the waiver process, have not gone through the adoption process, and are not on the multiple list will have to follow the same bid guidelines and policies as required by those who went through the regular adoption process. All costs associated with a review and adoption of materials submitted through the waiver process will be at the vendors' expense.

5.13. Special Rule to Update Adoptions - In order to acquire the latest materials, galley proofs will be accepted by the WVBE by June 1 of the adoption year to assure the content of the program. This special rule carries the requirements that the items will be manufactured 1) prior to August 1 of the adoption year as well as available to schools by July 1 of the implementation year and 2) according to specifications for the respective item. In the event no manufacturing specification exists for the item, the vendor shall attach a warranty statement to the bid guaranteeing durability for the adoption period.

5.13.a. Vendors are advised that the WVBE reserves the option to readopt or acquire new materials.

5.14. Warranty/Replacement - All instructional resources including print materials, electronic resources and systems, and kit-based instructional materials (excluding abuse and consumables) shall be durable for the adoption period. Replacement will be without cost for year one through three and pro-rated for the remaining period.

5.15. Required Format – Successful vendors shall provide an interactive version of their print instructional materials in electronic format as an option for adoption beginning with the adoption year 2012.

§126-36-6. West Virginia Instructional Materials Review Committee (IMRC) Requirements.

6.1. Reviews and Recommendations - The IMRC reviews and recommends instructional resources including print materials, electronic resources and systems, and kit-based instructional materials used as the primary source to deliver the content standards and objectives. The committee reserves the right to list the items as high or low ability and to request the revision of any bid during the hearing with the respective vendor. In addition, the committee reserves the right to review items bid as supplemental materials during the adoption cycle, and thereby reserves the right to remove them from the state multiple list should they be deemed inadequate or inappropriate.

6.2. Generic and Specific Criteria - Generic and specific evaluation criteria for the current adoption program(s) shall be furnished to each bidder electronically. Vendors are required to provide criteria correlation sheets, in paper format for printed materials and electronic format for non-print materials, including specific locations for each criterion, to the IMRC prior to June 10 of the adoption year. Failing to do so could result in a disqualification of product. If the materials do not address required specific criteria, this must be noted on the form as a "No." These documents shall be used to evaluate instructional materials that will be considered by the IMRC and IMAC for recommendation to the WVBE and by county boards of education local

selection committees in their selection process.

6.3. Examination Samples - The samples shall be submitted to designated committee members on or before June 10 of the adoption year for examination and study and are to be an exact duplicate of the "Official Bid" filed with the State Superintendent and clearly marked as to "Grade Levels" (Early and/or Middle Childhood) and "Course Titles" (Adolescent). For clarification, samples must bear a label stating the subject matter for which it is bid e.g., English Language Arts Composition K-12. Vendors/Publishers will provide designated committee members an inventory of shipments (samples) under separate mailing. Vendors may provide an examination sample of materials necessary for hands-on and/or inquiry based learning (e.g., instruments used for measuring, base-10 blocks, pattern blocks, play money, magnifying glasses, geoboards, etc.); however, one complete set of materials for each investigation must be included.

6.3.a. Vendors are requested to advise designated members of the IMRC (by letter, with criteria, and prior to July 10 of the adoption year of their intent to recall (at vendors' expense) any/all samples upon completion of the examination. It is further recommended that, where possible, all instructional materials submitted as a series be forwarded to designated committee members in one mailing.

§126-36-7. State Requirements.

7.1. Official Samples – The WVDE reserves the right to request an official state sample (to be reviewed by the WVBE) at any time during the contract period, not to exceed eight years. If requested, the mailing cartons shall be marked "Official Copy." Each sample item must be marked "Official Copy." Each vendor shall designate the "SUBJECT" and "COURSE TITLES" or "GRADE LEVEL(S)" on the outside front cover of each sample. All samples submitted for bid shall meet the manufacturing specifications for the particular item.

7.2. Warranty of instructional resources including print materials, electronic resources and systems, and kit-based instructional materials - Vendors shall comply with warranty requirements as noted in Section 5.14.

7.2.a. Print materials - Vendors shall mail or send electronically a Form B Warranty for each instructional material to the WVDE Coordinator of Instructional Resources within 60 days from the date of notification that the material has been approved for recommendation to the WVBE for inclusion on the Official Multiple Listing of Approved Materials. Bids can be accepted and approval granted for the adoption of softbound books; however, soft covers are generally prohibited above grade 2, unless the hardcover edition accompanies the soft cover edition to give counties a selection option. (Conditions noted in Section 5.13 must be followed.)

7.2.b. Instructional Materials - Instructional materials (systems of), or combinations of books and supplementary materials, shall meet the warranty/replacement requirements (Section 5.13). (Form M Warranty must be mailed to the WVDE Coordinator of Instructional Resources. Form M Warranty is included in the MSST book which is available through the Advisory Commission on Textbook Specifications.)

7.2.c. Learning Technologies - Learning technologies shall meet the warranty/replacement requirements (Section 5.13) with exceptions for justifiable circumstances. For example, if a vendor bids a DVD player as part of the solution package, and the normal warranty on the equipment is less than six years, it must be noted. In the case of learning technologies, it shall be sufficient for vendors to provide access via a web-hosted online format and password; vendors shall not be required to provide computer hardware.

7.3. Learning technology vendors may not bid the appropriate hardware needed for utilization of the curriculum solution, unless the instructional content is not technically designed to be, or cannot easily or cost effectively be, separated from such device.

7.4. The vendor must provide the necessary equipment and associated peripherals (see conditions noted in Section 7.3) with the curriculum material for committee members to have adequate time to review product. In the case of learning technologies, it shall be sufficient for vendors to provide access via a web-hosted online format and password; vendors shall not be required to provide computer hardware; however, if such hardware is provided by the vendor, it shall be provided for the duration of the review only.

7.4.a. Vendors must make technology materials and equipment operational during the entire review process including presentations, deliberations, and/or appeals.

7.4.b. When a vendor is completing the General and Specific Criteria forms, the following mandatory procedures must be met. Failing to do so could result in disqualification of product.

7.4.b.1. The vendor must reference where the General and Specific Criteria are found.

7.4.b.2. References must be given in the following manner on the Criteria forms:

7.4.b.2.A. For printed text materials, reference page number, paragraph, etc.

7.4.b.2.B. For multimedia material, reference exact chapters, frame numbers or time sequences, or provide some other specific digital navigation point such as a URL, and provide step by step "flow chart type" instructions for starting and utilizing the accompanying software, CD-ROM, and/or any other component or material that is necessary to locate the criteria addressed.

7.4.b.2.C. The same types of appropriate locations (as above in item "B") must also be noted for other software or courseware.

7.4.b.3. If the material does not address the Criteria, this must also be noted on the forms as a "No."

7.4.b.4. Completed General and Specific Criteria forms for primary source materials and the "Instructional Materials Product Inventory" must be sent to the committee members for

the review samples. These criteria and inventories are to be sent under separate cover.

7.4.b.4.A. An electronic copy of the completed General and Specific Criteria forms for primary source materials must be sent to the WVDE Coordinator of Instructional Resources. Acceptable forms in which the electronic version may be sent will be included in the call for materials information made available on the Instructional Materials website.

7.5. Liability - The State of West Virginia shall not be liable in any sum on account of any contract made in pursuance of the provisions hereof.

§126-36-8. Multiple List and Contract Information.

8.1. The selections and approval of the multiple list of the applicable Group as specified in Appendix A of Policy 2445.40 shall be made by the WVBE. Within thirty (30) days following publication of the Official State Multiple List, proper contracts shall be executed with the vendors of the selected instructional materials for a period prescribed by the WVBE in accordance with the provisions of W. Va. Code §18-2A-1, unless the law relating hereto during such period be altered, repealed, or amended.

8.2. The Official State Multiple List is scheduled to be forwarded to county boards of education by December of each adoption year.

§126-36-9. Services to Counties and Schools.

9.1. Vendors, dealers, agents and/or depositories shall promptly fill all orders of instructional materials by delivering, within ten days after the receipt of orders, to a common carrier at the point or points of shipment; shall on or before August 1 of each school year sell and cause to be delivered to the dealers, depositories, and/or county boards of education a sufficient number of instructional materials to supply the demand, and any failure or neglect to provide such instructional material at such time and place may cause the forfeiture of the contract. Furthermore, proper and adequate service shall be provided to assist state and local school authorities in making known to teachers and principals the philosophy, use, and best instructional methods and techniques. Vendors shall provide staff development activities to enable teachers to use approved instructional materials effectively and efficiently.

9.2. Publishers, vendors, agents, and/or their representatives/affiliates shall refrain from contacting any employee of a West Virginia county school system, any member of a county board of education, and/or any group or individual who may have influence over the adoption of instructional materials to discuss items that are or may be on that company's official bid submission for that adoption cycle. This blackout period will begin on the date the West Virginia Call for Materials is issued and will end on the day after the WVBE approves the Official State Multiple List of Instructional Materials.

9.3. Failure to comply with policy requirements and the West Virginia Ethics Act may result in disqualification from the current adoption year and subsequent removal of any/all products from the Official State Multiple List of Instructional Materials.

§126-36-10. Explanation of Bid Items.

10.1. International Standard Book Number (hereinafter ISBN) - Vendors are directed to list on the bid the complete and exact ISBN, including the digits and all hyphens or spaces, as it appears on the "Official Copy," except in the case of learning technologies that may not have an ISBN, in which case some other unique legal identification shall be used. Items without ISBN's shall be identified by the order number.

10.2. Program Designations - For the convenience of the WVBE the bids submitted hereunder shall be clearly designated by the applicable GROUP, PERIOD OF ADOPTION, SUBJECT and GRADE LEVEL and/or COURSE. Prices for the respective program(s) shall be set up in columns as herein designated:

10.2.a. COLUMN 1: Lowest net wholesale price. (See Section 2.1.)

10.2.a.1. Definition: Such price is that which is stated in the bid and will be sold to county schools and/or county school units, the approved depository(ies) and/or the responsible dealers.

10.2.b. COLUMN 2: The retail price to patrons (parents).

10.2.b.1. Definition: Such price is the net wholesale price in Column 1 plus a sum not to exceed a fifteen percent (15%) allowable increase to local dealers.

10.2.c. COLUMN 3: Lowest net exchange price. (See Section 5.4 for exchange information.)

10.2.c.1. Definition: Such price is the lowest net exchange price a vendor will allow any county schools and/or county school units, depository(ies), and/or responsible dealers, when items correspond in subject, grade level, and in prior legal use in the public schools of West Virginia is returned in exchange.

10.2.d. COLUMN 4: The retail exchange price (see Section 2.1) to patrons (parents).

10.2.d.1. Definition: Such price is the retail price exchanged with the vendor by school patrons (parents) plus a sum not to exceed a ten (10%) percent increase has been added to the net exchange price in Column 3, when items correspond in subject, grade level, and prior legal use in West Virginia.

10.2.e. COLUMN 5: Additional information, equipment or materials, needed for product utilization (but not on bid). (If curriculum solution bid is to include equipment, see Section 7.4.)

10.2.e.1. Definition: Each vendor shall enter pertinent information about the bid, the equipment, materials, and similar items necessary for product utilization that are not specified

anywhere on the bid. This will serve as a signal to potential users of possible additional costs necessary for the delivery of instruction.

10.3. Bid Forms: All bids must be submitted electronically on the official WVDE bid site. Upon completing an online bid submission, a signature sheet including the vendor's authorized signature and a deposit in the form of a certified check in the amount of \$1,000.00 and made payable to WVDE must be mailed to the WVDE Coordinator of Instructional Resources. The bid templates and examples shall be available on the WVDE website at <http://wvde.state.wv.us/materials>. Alternatively, vendors may request that the link to the online bid template be sent to them via email.

§126-36-11. Appeal Process for Publishers.

11.1. Purpose: The purpose of the appeal process is to provide publishers of instructional materials the opportunity to appeal the recommendations of the IMAC when the recommendations did not support the inclusion of their instructional materials on the *Official State Multiple List of Instructional Materials* recommended to the WVBE.

11.2. Appeal Bases - A publisher may base an appeal on any of the following errors alleged to have been made.

11.2.a. Correlations: The publisher contends that oversights occurred when the IMAC worked to determine the degree of alignment of materials to the established criteria.

11.2.b. Communication: The publisher contends that errors occurred in communication when publishers and/or their representatives offered clarifying responses to questions asked by the IMAC during deliberations.

11.2.c. Evaluation: The publisher contends that the IMAC did not understand the format of the program, print or electronic, and were unable to conduct a complete and thorough review of the materials.

§126-36-12. Explanation of Terms.

12.1. Appeal to Executive Committee

12.1.a. Definition: Upon receiving notification from the State Superintendent that a publisher has filed an appeal that warrants a hearing, the Executive Committee of the IMAC will convene to review the appeal relative to the Appeal Bases (see Section 11.2) and to provide a recommendation to the State Superintendent.

12.2. Appeal Board

12.2.a. Definition: A three member board, appointed by the State Superintendent, shall establish the process for investigating appeals by publishers relative to the actions of the IMAC and its Executive committee. The Appeal Board shall consist of three members which include:

12.2.a.1. a current or former member of the IMAC who was not involved in the review of the material(s) being appealed,

12.2.a.2. a public school teacher or administrator with expertise in the content area of the material(s) that is the subject of the appeal,

12.2.a.3. professional employee of the WVDE with expertise in the content area of the material(s) that is the subject of the appeal.

12.3. Criteria for the Adoption of Textbooks

12.3.a. Definition: The School Laws of West Virginia and the policies of the WVBE related to instructional materials provide the criteria for state level adoption of instructional materials.

§126-36-13. Appeal Procedure.

13.1. The decision of the IMAC to exclude a publisher's instructional resource, print or electronic, including the student edition, teacher's edition, bid, or any accompanying instructional materials from the *Official State Multiple List of Instructional Materials* will be transmitted by email and mail to the publisher by the WVDE.

13.2. A publisher that wishes to contest the decision to exclude his instructional materials on the *Official State Multiple List of Instructional Materials* may file a letter of appeal requesting an appeal hearing.

13.3. The letter of appeal shall be sent by the publisher via certified mail or hand carried by a company representative or by a designee of the company to the Office of the West Virginia State Superintendent of Schools. An email stating the intent to file an appeal must also be sent to the WVDE Coordinator of Instructional Resources.

13.4. The letter of appeal must be received by the State Superintendent within ten business days of the notice to exclude the publisher's materials from the *Official State Multiple List of Instructional Materials*.

13.5. Failure to file an appeal within the ten business days of the notification to exclude the publisher's materials shall be considered a forfeiture of the right to appeal.

13.6. Appeal Format: a publisher shall identify in writing to the State Superintendent each condition relative to the Appeal Bases (See Section 11.2) on which the appeal is based. The publisher shall provide evidence to support contentions relative to the Appeal Bases.

13.7. Initiation of the Appeal: The State Superintendent shall receive the publisher's request for an appeal hearing and will accept or reject the request not later than five working days following the receipt of the appeal.

13.8. The Letter of Appeal shall include the following information:

13.8.a. Name of Publisher

13.8.b. Mailing Address/Zip Code of Publisher

13.8.c. Telephone of Publisher

13.8.d. Email Address of Publisher

13.8.e. Specification of the instructional materials resource/program, series, student edition, teacher's edition/manual and/or other instructional material being appealed

13.8.f. Specification of alleged errors related to Appeal Bases (See Section 11.2) and supporting data.

§126-36-14. Appeals Based Upon Hearing and Evaluation Meetings.

14.1. The State Superintendent shall inform the WVDE Coordinator of Instructional Resources that an investigation is required.

14.2. The WVDE Coordinator of Instructional Resources, through the WVDE Division of Curriculum and Instruction, shall assist the Executive Committee of the IMAC in a review of the appeal.

14.3. The results of the review shall be submitted to the State Superintendent for consideration. The State Superintendent may accept the recommendation, or reject the recommendation of the Executive Committee of the IMAC and refer the appeal to an Appeal Board.

14.4. The results of the findings of the Executive Committee of the IMAC or the Appeal Board shall be submitted to the State Superintendent for a recommendation to the WVBE.

14.5. The decision of the WVBE shall be reported to the publisher and the IMAC.

14.6. It is intended that the Appeals Procedure, once initiated by a publisher, be conducted in a reasonable time frame so that the final decision regarding the appeal will be rendered before the State Superintendent's recommendation of the *Official State Multiple List of Instructional Materials* for consideration by the WVBE.

14.7. Notification Not To List - The WVDE Coordinator of Instructional Resources will notify the publisher by email and certified letter of the results of the appeal. In the event the decision is made to exclude the instructional materials of a publisher from the *Official State Multiple List of Instructional Materials* after conducting the appeal, the reasons for the exclusion of the instructional materials will be communicated to the publisher.

14.8. Communications – The WVDE Coordinator of Instructional Resources is responsible for keeping all parties informed and maintaining records regarding the various stages of the appeal process.

§126-36-15. Severability.

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

**POLICY 2445.41: "TEXTBOOK" ADOPTION: NOTICE, REQUEST, AND INSTRUCTIONS TO
PUBLISHERS**

COMMENT PERIOD ENDS: December 9, 2011

No comments were received.