



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY Education

RULE TYPE Legislative Exempt AMENDMENT TO EXISTING RULE Yes **TITLE-SERIES** 126-

RULE NAME Groupings For Adoption Of Instructional Resources For Early Childhood Education, 035
Middle Childhood Education And Adolescent Education (2445.40)

CITE AUTHORITY W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W. Va. 451; 376 S.E.2d
839 (1988)

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Monday, December 17, 2012 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
Alma Simpson
WVDE Office of Instruction
Capitol Building 6, Room 617
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

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: 126-035



Rule Id: 8866



Document: 24366



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839 (1988)

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

The proposed revision transposes the adoption years of science and English language arts. By making this change, the Next Generation Standards for Science will have been released, publishers will have had time to develop resources directly aligned to the new standards, and districts will be able to adopt quality instructional resources for both English language arts and science. Additionally, two policies will be combined to reduce the total number of policies related to instructional materials.

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.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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839 (1988)

**SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON
COSTS AND REVENUES OF STATE GOVERNMENT.**

This measure will have no impact on costs and revenues of state government.

**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.**



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839 (1988)

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

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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.



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839 (1988)

**3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE
ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.**

This measure will have no impact on costs and revenues of state government.

**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.**



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

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PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED
RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED
ELSEWHERE ON THIS FORM.

The purpose of this proposed rule is to update the schedule for the adoption instructional materials which
does not impact costs or revenues.

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

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.



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EXECUTIVE SUMMARY

WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title: Policy 2445.40 - Groupings for Adoption of Instructional Resources for Early Childhood Education, Middle Childhood Education, and Adolescent Education

Background: The State Board of Education adopted the Common Core State Standards for English Language Arts and joined the group that is developing the Next Generation Standards for Science. The science staff is working with Achieve as members of the lead state review team for the development of the Next Generation Standards for Science. Having quality instructional materials aligned to the Next Generation Standards is crucial.

A survey was conducted of the major publishing houses to determine the status of their English Language Arts and Science materials for alignment to the Next Generation Standards. Without exception, all publishers have developed materials directly aligned to Next Generation ELA Standards. While they are closely monitoring the progress, none of the publishers have materials that align to the Next Generation Standards for Science. The standard feeling among publishers is that it will take at least one year after the release of the Next Generation Standards for Science before quality materials that align to the new standards can be developed and ready for release. The adoption schedule submitted as Appendix A is based on information provided of the lead state review team for social studies and the results of the publishers' survey.

Additionally, this revision incorporates Policy 2445.44: *Rules for Granting Exemptions to the Legal Requirements for the Adoption and Utilization of Textbooks/Programs*, thereby eliminating the need for two separate policies.

Proposals: The following changes to Policy 2445.40 are proposed:

§126-35-1. Title

- The proposed title revision, "Adoption, Use and Groupings of Instructional Resources for Grades Pre-Kindergarten – Grade 12," makes the title more succinct while reflecting the subject of both policies that will be combined into one.

§126-35-2. Purpose

- The proposed revision will state the purpose of the two policies that will be incorporated into one.

§126-35-3. Rules

- The proposed revision includes the addition of Policy 2445.44 language.
- The proposed revision removes the automatic exemption for students with an IEP, thereby ensuring all students have access to high quality, grade level materials.

§126-35-4. Grouping of Instructional Resources

- The proposed revision will include materials for Pre-Kindergarten classrooms.
- The proposed revision removes the need for an attachment by including the groupings for

adoption periods in a table within the body of the policy.

- The proposed revision calls for the adoption schedule to be available on the West Virginia Department of Education Instructional Materials website as well as included in the call for instructional materials issued to publishers.
- The proposed revision allows for the assessment of a non-refundable fee for the review of instructional materials submitted for review during off-cycle years. In this proposed revision, the fee will be determined annually and included in the call for materials issued to publishers.

Appendix A: The proposed revision incorporates the Appendix within the body of the Policy.

Impact:

The proposed revision transposes the adoption years of science and English language arts. By making this change, the Next Generation Standards for Science will have been released, publishers will have had time to develop resources directly aligned to the new standards, and districts will be able to adopt quality instructional resources for both English language arts and science. Additionally, two policies will be combined to reduce the total number of policies related to instructional materials.

Response to Comments:

Stakeholders Consulted about Revision of Policy 2445.40

Internal:

- Carla Williamson, Division Lead, Teaching and Learning; Executive Director, Office of Instruction
- Don Chapman, Assistant Director, Office of Healthy Schools
- Marty Burke, Assistant Director, Office of Instruction
- Clayton Burch, Executive Director, Office of Early Learning
- Patricia Homberg, Executive Director, Office of Special Programs
- Gene Coulson, Executive Director, Office of Career & Tech Innovation
- Robin Anglin, Science Coordinator
- Denise White, Coordinator Instruction & Professional Development
- Alma Simpson, Coordinator of Instructional Resources

External:

Publishing House Representatives*:

- McGraw-Hill
- Houghton Mifflin Harcourt
- Pearson Learning

English Teachers

- Juanita (Spunky) Spinks
- Katie Dantrassy
- Mary Ann Triplett
- Vince McIntosh
- Katie Hays
- Nada Waddell
- Rachel Miller
- Walter Rayn

Science Teachers

- Linda Fonner
- Kathy Jacquez
- Kelly Buckner
- Andy Blackwood
- Dianna Boston
- Diane Bowers
- Margaret Hunter
- Mary Sue Burns
- Tina Cartwright
- Patrick Crane
- Joe Evans
- Tim Elliott
- Todd Ensign
- Sue Ann Heatherly
- Deb Hemler
- Carolyn Light
- Shawna Paynter

- Rosie Rhodes
- Lenora Richardson
- Libby Strong
- Jan Taylor
- Ron Maddalena
- Nancy Holdsworth
- Lee Ebersole

Publishing House Readiness for ELA Adoption

A survey of the three major publishing houses, Pearson Learning, McGraw-Hill, and Houghton Mifflin Harcourt, yielded the following information regarding their English language arts instructional materials relative to the Common State Standards for ELA.

1. What is the copyright date of the last major revision to your English Language Arts instructional materials?

Houghton Mifflin Harcourt Journeys Common Core ©2014* (K-6)

Holt McDougal Literature, Common Core Edition ©2012 (6-12)

McGraw-Hill (Grades K-5): ©2014*

Glencoe (Grades 6-12): ©2009

Pearson Scott Foresman (Grades K-5) ©2013*

Pearson Prentice Hall (Grades 6-12) ©2012

2. If the last major revision occurred prior to 2010, how have you updated your materials so they align to the CCSS for ELA?

The reading programs of all three companies were developed after the 2010 release of the CCSS for ELA with the exception of McGraw-Hill's Glencoe literature series for grades 6-12. The company's solution was *Glencoe Literature Common Core Bundle* ©2012, which includes the ©2009 Glencoe Literature Student Edition and a brand new ©2012 CCSS Project Practice Book. According to the company's response to this question, "the CCSS Project Practice Book offers extension activities specifically aimed at teaching and reinforcing skills needed to meet the Common Core State Standards. This book is designed to be used in conjunction with selections included within the Glencoe Literature Student Edition; reinforced skills include supporting conclusions using text evidence, small group collaborative work and discussions, and 21st Century Skills."

3. Is your company developing new resources for complete alignment to the CCSS for ELA as opposed to providing supplements to address missing components in currently developed materials?

4. If the answer to # 3 is yes, when is the anticipated release date for those new materials?

Without exception, the three major companies polled in this survey indicate that they continue to develop materials aligned to the CCSS and make them available through their websites. Additionally, Houghton Mifflin Harcourt is in the development phase of "an innovative new CC 6-12 ELA/Literature program which will launch in the fall of 2013;" McGraw Hill's K-5 program has a 2014 copyright and they are working on a program for grades 6-12 but are not willing to provide details at this time; and while Pearson Learning has updated their current programs for alignment to CCSS, they are planning another update to include Smarter Balanced assessment materials once that is available.

5. What additional information can you share that might impact our decision to move the ELA adoption ahead?

In describing their newly developed materials for ELA, the publishers refer to components such as an emphasis on text analysis, student and teacher collaboration, text complexity rubrics, balance of classic and contemporary literature and diverse informational texts, citing specific textual evidence and contextualized vocabulary study. Without exception, publishers indicate their materials come in a variety of formats that utilize "cutting-edge technology tools and [require] 21st century skills."

*According to copyright law, the copyright date printed in a work is the date of first publication but can be up to a year after first publication.

126CSR35

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

SERIES 35

**Adoption, Use, and Groupings of Instructional Resources for
Grades Pre-Kindergarten through Grade 12 (2445.40)**

§126-35-1. General.

1.1. Scope. - This legislative rule sets the requirements for the adoption, use, and legal exemptions for instructional resources and the groupings I-VI for the required subjects taught in pre-kindergarten through grade 12 (Pre-K – 12) education.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §§ 18-2A-1, §18-2-5, and 18-2-8.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of Former Rules. - This legislative rule repeals and replaces W. Va. 126CSR35 “Groupings for Textbook Adoption for Early Childhood Education, and Adolescent Education (2445.40),” filed December 9, 2010 and effective January 10, 2011 and repeals W.Va. 126CSR40 “Rules for Granting Exemptions to the Legal Requirements for the Adoption and Utilization of Textbooks/Programs (2445.44),” filed July 10, 1985, effective September 10, 1985.

§126-35-2. Purpose.

2.1. The purpose of this policy is to establish and classify the Pre-K - 12 school subjects required to be taught in the schools of West Virginia into adoption groups and to provide the rules for granting exemptions to the requirement that county boards of education adopt (and schools shall use) only those instructional resources on the current official state multiple list.

§126-35-3. Rules.

3.1. County boards of education shall adopt only those instructional resources approved by the State Board of Education and listed on the state multiple list. An adoption report shall be filed electronically with the State Board of Education by May 1 of each adoption year.

3.2. A waiver will be granted when based on any expressed provision of W.Va. Code §18-2A-8.

3.3. A request for a waiver must fall in one of three categories:

3.3.a. The additional adoption of instructional resources from the state multiple list not provided in the original county adoption;

3.3.b. The continued use of instructional resources from the most recently expired state multiple list with documentation assuring access by each student enrolled in the class; and/or,

3.3.c. Requests not in the two (2) preceding categories will be reviewed on a case-by-case basis and shall be presented to the State Board for its determination. Procedures for requesting a waiver can be found on the WVDE website at the State Board of Education Policy page.

3.4. A summary data analysis relative to the exemptions granted will be reviewed biennially by the State Board of Education to determine if the need exists for revision and/or modification within instructional resources laws or these rules.

§126-35-4. Grouping of Instructional Resources.

4.1. The classification of required subjects to be taught will be grades Pre-K - 12 education and will be grouped by adoption periods I-VI.

4.2. The West Virginia Instructional Materials Review/Advisory Committee, acting as a total body, shall select “Instructional Resources” as defined in W. Va. Code §18-2A-1, for each group by grade and subject for recommendation to the West Virginia Board of Education to be approved and published in the yearly *Official State Multiple List of Instructional Resources*.

4.3. The adoption period is based on the fiscal year (July 1 to June 30) and, unless otherwise noted, is established for six (6) years.

4.4. The required subjects, as applicable, are listed under classifications of early and middle childhood education and adolescent education.

4.5. Groupings I-VI.

Table 1: Grouping of Required Subjects for Adoption		
Adoption Group	Early & Middle Childhood Education	Adolescent Education
I	Social Studies Pre-K	Social Studies
II	English Language Arts	English Language Arts
III	Music Visual Art Health	Dance Theatre Music Visual Art Driver Education Health
IV	Science	Science

V	World Languages	World Languages
VI	Mathematics	Mathematics

4.6. The adoption schedule will be available on the West Virginia Department of Education Instructional Materials website and will also be included in the call for instructional resources issued approximately one year prior to the group adoption period.

4.7. The West Virginia Instructional Materials Review/Advisory Committee begins its “instructional resources” review process approximately one year prior to the group adoption period beginning date.

4.9. Vendors may submit newly developed and substantially revised instructional resources which have not previously been reviewed or are available as open resources for up to four years following the content-specific adoption period. Resources found to be in compliance with the established criteria will be added to the Official State Multiple List of Instructional Resources for the duration of the content-specific adoption period as posted on the WVDE Instructional Materials website.

4.9. Vendors who submit instructional resources for review in an off-cycle year will be assessed a non-refundable fee, the amount to be determined annually and included in the information provided with the call for materials that will be posted on the Instructional Materials website.

4.10. A schedule for the review of off-cycle materials will be available on the WVDE Instructional Materials website.

§126-35-5. Severability.

5.1. 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.

Proposed for Repeal

Policy 2445.44

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 40
RULES FOR GRANTING EXEMPTIONS TO THE LEGAL
REQUIREMENTS FOR THE ADOPTION AND UTILIZATION OF
TEXTBOOKS/PROGRAMS (2445.44)**

126-40-1. General.

1.1. Scope. -- This legislative rule identified the exceptions to the rule that county boards of education shall adopt and schools use only those basal textbooks on the current official state multiple list.

1.2. Authority. -- W. Va. Code 18-2A-8.

1.3. Filing Date. -- July 10, 1985.

1.4. Effective Date. -- September 10, 1985.

126-40-2. Preface.

Chapter 18, Article 2A, Section 8 of the State Code provides that all textbooks used for basal instruction in required areas of study in the public schools in West Virginia must be approved by the State Board of Education and listed on the state multiple list. The Code further permits the West Virginia Board of Education to make such rules and regulations necessary for carrying out the provisions of Article 2A. County boards of education shall adopt (and schools shall use) only those basal textbooks on the current official state multiple list unless "exempted" by an official action of the West Virginia Board of Education under the provisions of this policy.

126-40-3. Rules.

3.1. An "exemption" will be granted when based on any expressed provision of Article 2A.

3.2. A request for exemption must fall in one of four categories:

a. The additional adoption of textbooks from the state multiple list not provided in the original county adoption;

b. The guaranteed use of textbooks for a period commensurate to the appropriate adoption grouping for textbooks adopted/purchased for use in grades 7-12 (middle childhood and adolescent education) prior to the approval of a state multiple list;

c. The continued use of textbooks from the most recently expired state multiple list with documentation assuring availability to each student enrolled in the class for the duration of the adoption period; and/or,

d. Requests not in the three (3) preceding categories will be reviewed on a case-by-case basis and

shall be presented to the State Board for its determination.

3.3. Any student, instructed by an Individual Educational Program (IEP), under the rules and regulations for exceptional students, shall be excluded from any request provided herein.

3.4. Any request for an "exemption" must address the limitations imposed (if any) for the respective textbook adoption grouping and may exceed a period of six (6) years or be reduced to coincide with the adoption period of the respective subject area.

3.5. Comprehensive documentation must accompany each request approved by the county board of education as to meeting the specific needs of the learner(s), compatibility of different copyrighted editions in classroom instruction, and purchasing replacements to assure the availability of textbooks for the duration of the request.

3.6. A request for an "exemption" may be submitted to the State Superintendent of Schools only after it has been:

- a. reviewed by the county textbook committee which was appropriate for the subject;
- b. recommendation by the county superintendent of schools; and
- c. approved by the county board of education.

3.7. A county board of education shall not claim an "exemption" until it has the formal, written approval of the State Superintendent of Schools.

3.8. Upon approval, the "exemption" will become an official record for purposes of the county textbook adoption report, school utilization report, and county accreditation.

126-40-4. Implementation.

4.1. The department may develop the procedures to implement these rules.

4.2. A summary data analysis relative to the exemptions granted will be reviewed annually by the State Board of Education to determine if the need exists for revision and/or modification within the textbook laws or these rules.

126CSR35

**POLICY 2445.40: Adoption, Use, and Groupings of Instructional Resources for
Grades Pre-Kindergarten through Grade 12**

COMMENT PERIOD ENDS: December 17, 2012

COMMENT RESPONSE FORM

NOTICE: Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.

The following form is provided to assist those who choose to comment on Policy 2445.40: Groupings for Adoption of Instructional Resources for Early Childhood Education, Middle Childhood Education, and Adolescent Education. Additional sheets may be attached, if necessary.

Name: _____ Organization: _____

Title: _____

City: _____ State: _____

Please check the box below that best describes your role.

- | | | |
|---|--|--|
| ☐ School System Superintendent | ☐ School System Staff | ☐ Parent/Family |
| ☐ Principal | ☐ Teacher | ☐ Business/Industry |
| ☐ Professional Support Staff | ☐ Service Personnel | ☐ Community Member |

COMMENTS/SUGGESTIONS
§126-35-1. General.
§126-35-2. Purpose.

126CSR35

§126-35-3. Rules.
§126-35-4. Grouping of Instructional Resources.
§126-35-5. Severability.
Repeal of Policy 2445.44: Rules for Granting Exemptions to the Legal Requirements for the Adoption and Utilization of Textbooks/Programs.

Please direct all comments to:

Alma Simpson
Office of Instruction
West Virginia Department of Education
Capitol Building 6, Room 617
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: awsimpso@access.k12.wv.us
Fax No.: (304) 558-5325