



**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 Definition of Good Cause for Refusal to Receive School Board Training (3235) **074**

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, March 18, 2013 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
Charles Heinlein, Deputy State Superintendent
West Virginia Department of Education
Capitol Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330

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: 126-074



Rule Id: 8964



Document: 24610



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY Education

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RULE NAME Definition of Good Cause for Refusal to Receive School Board Training (3235) **074**

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)

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Revisions to Policy 3235 are recommended in order to bring the existing WVBE Policy in conformity with the 2009 statutory revisions to W. Va. code §18-5-1a, particularly as relating to penalties for a county board members (members) failure to receive the requisite seven (7) clock hours training without good cause as defined in the statute. See §2.1 and §2.2 which, under terms of the proposed policy revision, provide rationale and definitions inherent to satisfy the statutory revisions of 2009.

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)

AGENCY **Education**

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

RULE NAME **Definition of Good Cause for Refusal to Receive School Board Training (3235)** **074**

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)**

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

There will be no cost to 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 2)

AGENCY Education

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

RULE NAME Definition of Good Cause for Refusal to Receive School Board Training (3235) 074

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)

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.



Title-Series: 126-074



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY Education

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

RULE NAME Definition of Good Cause for Refusal to Receive School Board Training (3235) **074**

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)

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

There will be no increase or decrease in revenues.

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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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)

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.

As per W. Va. Code §6-6-7, petitioning citizens would bear the costs of petitioning for an elected officials removal from office due to neglect of duty.

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 3235: Definition of Good Cause for Refusal Failure to Receive School Board Training

Background:

The West Virginia Legislature amended W. Va. Code §18-5-1a in 2009 relative to a county board of education member's failure to receive the requisite seven (7) clock hours training required in that statute. The Legislature amended and then reenacted an existing provision of statute so that a county board member's failure to receive training without the showing of good cause could constitute "neglect of duty." The resulting statute vacated then existing law that authorized the state Board of Education to institute proceedings in circuit court to remove a county board member (members) from office for failure to receive training without the member's (members') showing of good cause.

Proposals:

Revisions to State Board of Education Policy §3235 are recommended in order to bring the existing WVBE Policy in conformity with the 2009 statutory revisions to W. Va. code §18-5-1a, particularly as relating to penalties for a county board member's (members') failure to receive the requisite seven (7) clock hours training without good cause as defined in the statute. See §2.1 and §2.2 which, under terms of the proposed policy revision, provide rationale and definitions inherent to satisfy the statutory revisions of 2009.

Impact:

The proposed revisions to the policy bring it into conformity with the statutory process for initiating proceedings relative to removal from office of an elected official or officials for "neglect of duty" and, as such, eliminates language which is inconsistent or does not comport to W. Va. Code §6-6-7 and its application to a county board member's (members') for failure to receive the requisite clock hours training required under W. Va. Code §18-5-1a.

Stakeholders

West Virginia County Board Member Training Standards Review Committee

Gayle Manchin, Vice President – West Virginia Board of Education

Robert W. Dunlevy, Secretary – West Virginia Board of Education

Jenny Phillips, Member – West Virginia Board of Education

Sis Murray, Member – Marion County Board of Education

David Ambrose, Member – Morgan County Board of Education

Christine Carder, Member – Ohio County Board of Education

Dr. Barbara Parsons, President – Monongalia County Board of Education

Dr. Gus Penix, Executive Director – Office of Education Performance Audits (representing OEPA)

Betty Jo Jordan, Executive Assistant – West Virginia Department of Education (representing the state Superintendent of Schools on behalf of the state Department of Education)

Dr. Kathy D’Antoni, Assistant Superintendent of Schools - West Virginia Department of Education (designee of State Superintendent of Schools)

Nick Zervos, Executive Director – Regional Education Service Agency 6 (representing RESA executive directors)¹

Dr. Larry Parsons, Superintendent – Preston County Schools (representing county schools superintendents)

MaryLu Hutchins. Student Services Director – Ohio County Schools (representing central office administrators)

Dr. Dixie Billheimer, Chief Executive Director – West Virginia Center for Professional Development (representing WV-CPD)

Frank Collier, Executive Director – Elementary School Principals Association (representing school principals)

Judy Hale or designee, President – AFT West Virginia (representing professional educator organizations)

Dale Lee or designee, President – West Virginia Education Association (representing professional educator organizations)

Gale Pukall, Teacher – Kenna Elementary School (representing professional educators)

Justin Raber, President-Elect – West Virginia PTA (representing parents)

Dr. Michael Cunningham, Program Director - Leadership Studies (LS) – Marshall University Graduate College (representing higher education interests)

Bob Brown, Office of the President – Project Manager / Reconnecting McDowell – American Federation of Teachers, AFL-CIO (Representing Labor interests)

Sammy Gray, Manager State Affairs – FirstEnergy Corporation (representing business interests)

Patti Hamilton, Executive Director – West Virginia Association of Counties (representing elected county)

The Honorable Gregory Tucker, Education Committee – West Virginia Senate (representing legislators)

The Honorable Mark Wills, Senate Education Committee – West Virginia Senate (representing legislators)

The Honorable David Perry, Education Committee – West Virginia House of Delegates (representing legislators)

Dr. Howard M. O’Cull, Executive Director – West Virginia School Board Association / Serving as Committee Secretary

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 74
DEFINITION OF GOOD CAUSE FOR ~~REFUSAL~~ FAILURE
TO RECEIVE SCHOOL BOARD TRAINING (3235)**

§126-74-1. General.

1.1. Scope. - This policy defines good cause for an individual who fails to meet the training requirements of a school board member as prescribed by West Virginia Code and West Virginia Board of Education approved policy and/or procedures.

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

1.3. Filing Date. - ~~November 18, 1993.~~

1.4. Effective Date. - ~~December 18, 1993.~~

1.5. Repeal of Former Rule. - This legislative rule amends 126CSR74 West Virginia Board of Education Policy 3235, Definition of Good Cause for Refusal to Receive School Board Training, filed November 18, 1993, and effective December 18, 1993.

§126-74-2. Definition.

2.1. Rationale. - W. Va. Code '18-5-1a requires the West Virginia Board of Education to define good cause for an individual who fails to meet the training requirements of a school board member. ~~Failure by a board member to show good cause for not attending and completing the approved course of orientation and training shall constitute a neglect of duty and shall result in the removal of such board member from office by the Circuit Court upon petition of the Circuit Court by the West Virginia Board of Education.~~ Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause constitutes neglect of duty under W. Va. Code §6-6-7.

2.2. Definition. - ~~Failure by an individual, without good cause, to meet the training requirements of W. Va. Code §18-5-1a shall constitute neglect of duty. "Good Cause," which shall excuse such failure,~~ means any of the following that prevents the member from attending and completing West Virginia Board of Education approved training to meet requirements of W. Va. Code §18-5-1a:

2.2.a. an incapacitating physical or mental condition of the member,

2.2.b. a death in the immediate family of the member,

2.2.b.1. For purposes of the policy, the phrase "immediate family" means the member's spouse, children, parents or any other relative who resides in the member's household and is a dependent of the member.

2.2.c. an accident or illness in the immediate family of the member which requires the member's presence, or

2.2.d. any other cause which is beyond the control of the member.

~~For purposes of the policy, the phrase "immediate family" means the member's spouse, children, parents or any other relative who resides in the member's household and is a dependent of the member.~~

~~An individual who indicates reason 2.2.a as good cause for not completing the required training shall provide written verification from his or her attending physician regarding the incapacitating physical or mental condition. An individual who indicates reason 2.2.c may be required to provide an affidavit or other supporting evidence regarding the accident or illness affecting the immediate family of the member.~~

§126-74-3. Severability.

3.1. 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 3235: Definition of Good Cause for Failure to Receive School Board Training**COMMENT PERIOD ENDS: March 18, 2013****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 3235: Definition of Good Cause for Failure to Receive School Board Training. 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
§126-74-1. General.
§126-74-2. Definition.

§126-74-3. Severability.

Please direct all comments to:

Charles Heinlein
Deputy State Superintendent
West Virginia Department of Education
Capitol Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: cheinlei@access.k12.wv.us
Fax No.: (304) 558-3762.