



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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10/10/2013 3:50:43 PM

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 School Calendar (3234) 073

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
Tuesday, November 12, 2013 4:00 PM**

**WRITTEN COMMENTS MAY BE MAILED TO
Amy Willard, Executive Director
WVDE Office of School Finance
Capitol Building 6, Room 215
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: 126-073



Rule Id: 9291



Document: 25355



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

AGENCY Education

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

RULE NAME School Calendar (3234) **073**

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

WVBE Policy 3234 is being repealed and replaced. The proposed policy (School Calendar) sets forth general criteria for the adoption of annual school calendars and provides as much flexibility as possible considering the statutory requirements contained in W. Va. Code §§18-5-45, 18-5A-5 and 18A-5-2. The policy applies to all local education agencies that develop school calendars, which are the county boards of education and the multi-county vocational centers. The institutional programs operated by the WVBE and the WV Schools for the Deaf and the Blind also adopt, with certain modifications, the provisions of the policy.

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 School Calendar (3234) 073

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.

This revision may cause county boards of education to incur additional expenditures for publishing public hearing notices for the required minimum of two public hearings that allow all interested parties to discuss the school calendar. These additional fees are the cost of the county and are expected to be minimal. This revision is not expected to have an impact on costs and revenues at the state level.

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 School Calendar (3234) **073**

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.



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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 **School Calendar (3234)** **073**

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.

None

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

AGENCY **Education**

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

RULE NAME **School Calendar (3234)** **073**

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.

None

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 3234, School Calendar

Background:

The West Virginia Legislature passed Senate Bill 359 during the 2013 legislative session, which among other things amended WVC §§18-5-45, 18-5A-5 and 18A-5-2 regarding the school calendar to provide county boards of education more flexibility in adopting a school calendar that meets their individual needs while at the same time requiring that the county boards provide students with a minimum of 180 separate days of instruction. WVC §18-5-45 was further amended by House Bill 3157 to delay the implementation of the changes to the school calendar until the 2014-15 school year. Among one of the new requirements is that the State Board of Education adopt a school calendar policy for the purposes of implementing the provisions of the code requirements.

Proposals:

Rather than create a new policy, State Board Policy 3234, entitled “Year-Round Education Programs,” was used, amending the name to *School Calendar*, and deleting all provisions of the previous policy and replacing them with the provisions included in the attached policy. The proposed policy sets forth general criteria for the adoption of annual school calendars and provides as much flexibility as possible considering the statutory requirements contained in WVC §§18-5-45, 18-5A-5 and 18A-5-2. The policy applies to all local education agencies that develop school calendars, which are the county boards of education and the multi-county vocational centers. The institutional programs operated by the West Virginia of Education and the Schools for the Deaf and the Blind also adopt, with certain modifications, the provisions of the policy.

Impact:

County boards of education and multi-county vocational centers will have more flexibility in developing their calendars each year that meet their local needs while at the same time ensuring that all statutory requirements are met. These include: the requirement that county boards hold at least two (2) public hearings that allow all interested parties to discuss the school calendar; that they provide no less than 180 separate days of instruction; and, that faculty senates be provided a two hour block of time to meet on a day schedule for the opening of school prior to the beginning of the instructional term and at least four additional two-hour blocks of time during noninstructional days scheduled at least once every 45 instructional days. Other changes include the beginning and closing dates of the minimum 200-day employment term has been extended from 43 to 48 weeks and the five Instructional Support and Enhancement days have been eliminated. These changes should result in more flexibility and more community involvement in the design and adoption of annual school calendars.

Response to Comments:

Policy 3234 – School Calendar

Stakeholders:

WV Department of Education:

- James B. Phares, Ed.D., State Superintendent of Schools
- Joseph Panetta, Assistant Superintendent, Division of Student Support Services
- Robert Hull, Associate Superintendent, Division of Teaching and Learning
- Amy Willard, Executive Director, Office of School Finance
- Betty Jo Jordan, Executive Assistant, Office of Superintendent
- Heather Hutchens, Esq., General Counsel, Office of Legal Services

Others(1):

- WVBE Re-imagining Instructional Time Committee
 - West Virginia Education Association
 - West Virginia Professional Educators Association
 - American Federation of Teachers – WV
 - West Virginia School Service Personnel Association
 - West Virginia Parent Teacher Association
 - Regional Education Service Agencies
- State Superintendent's Advisory Committee
- West Virginia School Board Association
- West Virginia Association of School Administrators

Note: (1) The policy will be presented to the WVBE Re-imagining Instructional Time Committee at its initial meeting on October 8, 2013. The policy will then be distributed to the other stakeholders listed above, providing them the opportunity to provide input and submit suggestions and comments.

126CSR73

TITLE 126 LEGISLATIVE RULE BOARD OF EDUCATION

SERIES 73 School Calendar

§126-73-1. General.

1.1. Scope. - This legislative rule sets forth general regulations related to the adoption of the annual school calendar by the county boards of education (county boards) and multi-county vocational centers.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-5A-5, 18-5-45 and 18A-5-2.

1.3. Filing Date.

1.4. Effective Date.

1.5. Repeal of Former Rule. - This legislative rule repeals and replaces W. Va. 126CSR73, West Virginia Board of Education (WVBE) Policy 3234, “Year-Round Education Programs,” filed March 13, 2001, and effective April 12, 2001.

§126-73-2. Purpose.

2.1. The purpose of this rule is to set forth general criteria for adoption of the annual school calendar to provide county boards of education and multi-county vocational centers as much flexibility as possible so that they can develop a calendar that meets their individual needs.

§126-73-3. Application.

3.1. These regulations apply to the adoption of the school calendars for the 2014-15 school year and all subsequent years.

§126-73-4. Definitions.

4.1. Accrued instructional time - Instructional time earned during the instructional term from time added to the instructional day beyond the minimum instructional time required by W. Va. 126CSR42, West Virginia Board of Education Policy 2510, Assuring the Quality of Education: Regulations for Education Programs (Policy 2510) .

4.2. Cocurricular activity - An activity that is closely related to identifiable academic programs or areas of study that serve to complement the academic and technical curricula.

4.3. County boards - The governing body charged with the supervision and control of a county board school district, which is composed of five members, nominated and elected by the voters of the respective county.

4.4. Extracurricular activity – An activity that is not part of the required instructional day or curricular offerings but that is under the supervision of the school. Examples include athletics, noninstructional

assemblies, social programs, entertainment and other similar activities.

4.5. Instructional day – Pursuant to W. Va. Code §18-5-45, an instructional day means a day within the 180 instructional term, including the days used to reschedule canceled instructional days, that meets the following criteria:

4.5.a. Instruction is offered to students for at least the minimum amount of hours specified by W. Va. 126CSR28, West Virginia Board of Education Policy 2525, West Virginia's Universal Access to Early Education System (Policy 2525) for pre-kindergarten and Policy 2510 for grades kindergarten through twelve.

4.5.b. Instructional time is used for instruction and/or cocurricular activities.

4.5.c. The instruction provided meets the content standards and objectives (CSOs) prescribed by the WVBE.

4.6. Minimum employment term – An employment term for regular, full-time county board employees of at least 200 days, exclusive of Saturdays and Sundays, which do not need to be successive. Pursuant to W. Va. Code §18A-4-8, the minimum employment term shall be no less than ten months with each month defined as 20 employment days.

4.7. Multi-County vocational center – One of the seven vocational centers created by the WVBE of Education pursuant to the provisions of W. Va. Code §18-2B-2 to provide vocational programs to students of two or more counties.

4.8. Noninstructional day - A day within the minimum 200 day employment term during which either no instruction is provided to students, or the instruction provided does not meet the criteria defined in Section 4.5.

4.8. Out of calendar day – A nonpaid day that is not included as a part of the minimum 200 day employment term.

4.9. School year – Pursuant to W. Va. Code §18-1-2, the school year begins on the first day of July and ends on the thirtieth day of June.

§126-73-5. School Calendar.

5.1. Each county board of education and multi-county vocational center must develop a school calendar each year and submit the proposed calendar to the State Superintendent of Schools (State Superintendent), or designee, by the established deadline.

5.2. The school calendar shall provide an instructional term for students of no less than 180 separate days of instruction and a minimum employment term for employees of no less than 200 days.

5.3. A county board may provide for a longer instructional term for students, but must increase the employment term by a comparable number of days.

5.4. Each county board of education must develop an inclement weather and emergencies policy designed to guarantee that 180 separate days of instruction are provided to students.

5.5. The minimum instructional term may be decreased by order of the State Superintendent in any

county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

5.6. The WVBE is authorized under W. Va. Code §18-5-45(o) to grant a waiver to a county board for noncompliance with the provisions W. Va. Code §§18, 18A, 18B and 18C to maintain compliance in reaching the mandatory 180 separate days of instruction. Waiver requests are to be submitted in accordance with the procedures established by the WVBE, using the waiver request form developed for this purpose. The procedures and form can be found on the West Virginia Department of Education's website.

§126-73-6. Employment Term.

6.1. The school calendar shall provide for an employment term that meets the following criteria:

6.1.a. An employment term of at least 200 days, excluding Saturdays and Sundays, for all regular, full-time employees, which need not be successive.

6.1.b. The length of the employment term (from the beginning to closing dates) cannot exceed 48 weeks, in accordance with W. Va. Code §18-5-45(c)(1).

6.1.c. The minimum employment term shall consist of no less than 180 separate days of instruction, and 20 noninstructional days, comprised of the following:

6.1.c.1. Seven paid holidays (any combination of the school holidays included in W. Va. Code §18A-5-2, which are: Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day, or West Virginia Day)

6.1.c.2. An election day, as specified in W. Va. Code §18A-5-2;

6.1.c.3. Six days to be designated as outside of the school environment, four of which must be scheduled after the 130th day of instruction of the school calendar;

6.1.c.4. The remaining days to be designated by the county board for purposes to include, but not be limited to:

6.1.c.4.A. Curriculum development;

6.1.c.4.B. Preparation for opening and closing school;

6.1.c.4.C. Professional development;

6.1.c.4.D. Teacher-pupil-parent conferences;

6.1.c.4.E. Professional meetings;

6.1.c.4.F. Making up days when instruction was scheduled but not conducted;

6.1.c.4.G. At least four two-hour blocks of time for faculty senate meetings with each two-hour block of time scheduled once at least every 45 days; and,

6.1.c.4.H. Scheduled out-of-calendar days that are to be used for instructional days in

the event school is canceled for any reason.

6.1.c.5. Pursuant to W. Va. Code §18-5A-5, county boards are required to provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning of the instructional term.

6.1.c.6. County boards are also required to provide to all professional and service personnel employed at least 18 hours of professional development annually and the school calendar must be developed in such a manner that the requirement can be met during the minimum 200-day employment term. All professional and service personnel are required to complete the number of hours of professional development provided each year by their respective county boards.

6.1.d. School calendars must be developed in compliance with W. Va. Code §18-5-45, which requires that the minimum two hundred day employment term be comprised of seven school holidays. The remaining school holidays are to be scheduled as nonpaid, out of calendar days, and are to be considered as such for all 200-day employment contracts.

§126-73-7. Instructional Term.

7.1. The school calendar shall provide an instructional term for students of no less than 180 separate days of instruction.

7.2. Each county board of education must develop a policy that requires additional minutes of instruction be added to the school day, or that entire additional days of instruction be added, to recover time lost due to late arrivals and early dismissals due to inclement weather or by the closing of schools because of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

7.3. County boards of education, however, will not be required to add additional minutes to the instructional day if all affected schools have accumulated sufficient accrued instructional time through their regular schedules that can be used to make-up the missed time caused by late arrivals and early dismissals.

7.4. Accrued instructional time may be only used to recover instructional time lost due to: the late arrival or early dismissal of students due to inclement weather; the closing of school because of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control; professional development activities; or, to accommodate the scheduling of faculty senate meetings on instructional days. Accrued instructional time cannot be used to avoid one hundred eighty separate days of instruction.

7.5. If it is not possible to provide 180 separate instructional days within the school calendar as originally scheduled, the county board must schedule instruction on any available noninstructional day (other than holidays, election day, or Saturdays and Sundays), regardless of the purpose for which the day was originally scheduled, or use a day that was scheduled as an out-of-calendar day. County boards have the ability to apply for a waiver in accordance with the provisions of W. Va. Code §18-5-45(o) to assist with meeting the mandatory 180 days of instruction.

7.6. If an out-of-calendar day is used as a make-up instructional day, the originally scheduled instructional day that was canceled becomes the out-of-calendar day (unpaid day). In accordance with W. Va. Code §18A-5-2, an employee's pay is not to be adjusted during a pay period because of this revision in the school calendar.

7.7. In accordance with Policy 2510, co-curricular activities may, by their nature, be scheduled without regard to the use of accrued instructional time.

7.8. Extracurricular activities do not count towards meeting the minimum instructional time for an instructional day. Accrued instructional time may not be used to accommodate the scheduling of extracurricular activities during instructional days.

§126-73-8. Faculty Senate Meetings.

8.1. In accordance with W. Va. Code §18-5A-5, the school calendar must provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior the beginning of the instructional term.

8.2 The school calendar must also provide four additional two-hour blocks of time during noninstructional days, with each two-hour block of time scheduled once at least every 45 instructional days. The portion of the noninstructional day scheduled for the faculty senate meeting shall be considered as part of the purpose for which the noninstructional day is scheduled.

8.3. Faculty senates may also schedule a meeting during an instructional day if sufficient accrued instructional time has been earned by a school; however, every school in the district must have earned sufficient time for all faculty senates in the district to meet in this manner.

8.4. A faculty senate may also meet for an unlimited block of time during a noninstructional day to discuss and plan strategies to improve student instruction and to conduct other faculty senate business.

8.5. A faculty senate may elect to schedule a meeting on an instructional day outside of the instructional time for students, and take compensatory time off on the noninstructional day that is provided by the county board for its meeting, as long as the meeting takes place prior to the day that is scheduled in the school calendar.

8.6. If a noninstructional day that is originally scheduled for faculty senates to meet is canceled due to inclement weather, the county board may, but is not required, to reschedule the noninstructional day in order for the faculty senates to meet.

§126-73-9. Public Hearings.

9.1. Prior to voting on a final school calendar, each county board of education must hold at least two public hearings that allow all interested parties to discuss the school calendar.

9.2. According to W. Va. Code §18-5-45, public notices of the hearings must be published as a Class II legal advertisement in accordance with the provisions of W.V. Code §59-3-1 et seq. This means the legal advertisement must be published once a week for two successive weeks in a qualified newspaper published in the publication area. Notices for both hearings can be published in one advertisement. The first notice must be published at least ten days prior to the first meeting to provide sufficient time for interested parties to plan on attending the hearing.

§126-73-10. Submission of School Calendar to WVBE for approval.

10.1. In accordance with W. Va. Code §18-5-45(k), county boards must obtain approval of the school calendar from the WVBE prior to its implementation.

10.2. Unless the WVBE requests otherwise, the authority to approve the annual school calendars is delegated to the State Superintendent. This does not include the approval of waiver requests.

10.3. The school calendar, and any additional requested information, must be submitted in accordance with the annual instructions issued by the State Superintendent.

§126-73-11. Severability.

11.1. 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.

126CSR73

POLICY 3234: School Calendar

COMMENT PERIOD ENDS: November 12, 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 3234: School Calendar. 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-(73)-(1). General.
§126-(73)-(2). Purpose

126CSR73

§126-(73)-(3). Application

§126-(73)-(4). Definitions

§126-(73)-(5). School Calendar

§126-(73)-(6). Employment Term

§126-(73)-(7). Instructional Term

§126-(73)-(8). Faculty Senate Meetings

126CSR73

§126-(73)-(9). Public Hearings

§126-(73)-(10). Submission of School Calendar to WVBE for Approval

§126-(73)-(11). Severability

Please direct all comments to:

Amy Willard, Executive Director
Office of School Finance
West Virginia Department of Education
Capitol Building 6, Room 215
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: awillard@access.k12.wv.us
Fax No.: (304) 558-8867