



**WEST VIRGINIA  
SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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3/9/2017 11:27:54 AM

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 **Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000)** **126**

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, April 10, 2017 4:00 PM**

WRITTEN COMMENTS MAY BE MAILED TO  
**Heather Hutchens, General Counsel  
WVDE Office of Legal Services  
Capitol Building 6, Room 362  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305**

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

**Yes**  
**Jill M Newman -- 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: 126-126



Rule Id: 16405



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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
RULE NAME	Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000)		TITLE-SERIES 126-126

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**

The changes to Policy 5000 are necessitated by changes made during the 2016 Legislative session in HB 4566. The changes to Policy 5000 will allow personnel directors to make certain staffing recommendations/changes in more realistic timeframe with some additional flexibility.

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

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

AGENCY	Education		
RULE TYPE	Legislative Exempt	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000)	TITLE-SERIES	126-126

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)

**PRIMARY CONTACT**

Office of Legal Services  
West Virginia Department of Education  
1900 Kanawha Blvd., East, Capitol Building 6  
Charleston, STATE ZIP

**SECONDARY CONTACT**

Virginia Harris  
West Virginia Board of Education  
1900 Kanawha Blvd., East, Capitol Building 6  
Charleston, STATE SECONDARY ZIP SECONDARY

Jill M Newman -- 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** Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000) 126

**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 impact on state government cost or revenue should the proposed changes be approved by the West Virginia Board of Education.**

**Jill M Newman -- 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 **Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000)** **126**

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

Jill M Newman -- 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 **Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000) 126**

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 impact on state government cost or revenue should the proposed changes be approved by the West Virginia Board of Education.**

**Jill M Newman -- 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)**

AGENCY **Education**

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

RULE NAME **Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000) 126**

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.

**There will be no impact on state government cost or revenue should the proposed changes be approved by the West Virginia Board of Education.**

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

**Jill M Newman -- 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 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY	Education		
RULE TYPE	Legislative Exempt	AMENDMENT TO EXISTING RULE	Yes
RULE NAME	Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000)		TITLE-SERIES 126-126

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 CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Changes to Policy 5000 are being requested to bring the Policy in compliance with Legislative changes (HB 4566-2016). Specifically, the changes 1) update a code citation, 2) align the provisions allowing transfers to accommodate unforeseen changes in student population by moving the date from March 1 to May 1, and 3) update provisions regarding vacancies known to exist for the ensuing school year by adjusting the date from February 15 to March 1 and clarifying that instead of the positions going exclusively to employees subject to release that the positions be filled from among all qualified applicants and that individuals subject to release shall be considered to be applicants for all positions for which they are qualified and shall be considered before the position is posted for non-employees.

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

Yes  
Jill M Newman -- 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: 126-126



Rule Id: 16405



Document: 48258



## EXECUTIVE SUMMARY

### WEST VIRGINIA DEPARTMENT OF EDUCATION

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**Policy Number and Title:** Policy 5000: Procedures for Designated Hiring and Transfer of School Personnel

**Background:** The changes to Policy 5000 are necessitated by changes made during the 2016 Legislative session in HB 4566.

**Proposals:** Changes to Policy 5000 are being requested to bring the Policy in compliance with Legislative changes. Specifically, the changes 1) update a code citation, 2) align the provisions allowing transfers to accommodate unforeseen changes in student population by moving the date from March 1 to May 1, and 3) update provisions regarding vacancies known to exist for the ensuing school year by adjusting the date from February 15 to March 1 and clarifying that instead of the positions going exclusively to employees subject to release that the positions be filled from among all qualified applicants and that individuals subject to release shall be considered to be applicants for all positions for which they are qualified and shall be considered before the position is posted for non-employees.

**Impact:** The changes to Policy 5000 will allow personnel directors to make certain staffing recommendations/changes in more realistic timeframe with some additional flexibility.

**Response to Comments:** Eighteen comments from 10 different individuals were received during the original comment period. Eight commenters were teachers, one was a Director of Human Resources, and one was an ECCAT. As a result of the public comment period, two additional changes were made. In Section 10, the last sentence of section 10.1 was removed. In Section 12.6, the language was revised to clarify that when vacancies that are known to exist for the ensuing school year are posted, the successful candidate shall be chosen from among all applicants by using the procedures explained in Section 6 of the policy. In order to allow all interested groups and individuals to comment on this proposed changed, it is requested that the version of Policy 5000 currently on public be withdrawn, and that the policy be placed on public comment again with all changes included.

126CSR126

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

SERIES 126  
PROCEDURES FOR DESIGNATED HIRING AND TRANSFER OF SCHOOL PERSONNEL (5000)

**§126-126-1. General.**

1.1. Scope. - This legislative rule sets forth general hiring criteria for classroom teachers, establishes processes that a faculty senate may adopt when making hiring recommendations for classroom teachers, clarifies certain transfer procedures, and outlines the roles of the principal, county superintendent, and county board of education in the limited hiring and transfer procedures set forth herein.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-2-5, 18-5A-5, 18A-2-1, 18A-2-7, and 18A-4-7a.

1.3. Filing Date. - ~~August 16, 2013.~~

1.4. Effective Date. - ~~September 16, 2013.~~

1.5. Repeal of Former Rule. - This legislative rule amends W. Va. 126CSR126, West Virginia Board of Education Policy 5000, Procedures for Designated Hiring and Transfer of School Personnel, filed ~~July 17, 2013~~ August 16, 2013, and effective ~~July 17, 2013~~ September 16, 2013.

**§126-126-2. Purpose.**

2.1 The purpose of this rule is to set forth general hiring criteria for classroom teachers, establish processes that a faculty senate may adopt when making hiring recommendations for classroom teachers, clarify certain transfer procedures, and outline the roles of the principal, county superintendent, and county board of education in the limited hiring and transfer procedures set forth herein. Utilization of these processes and procedures will provide teachers and principals with the ability to have a significant voice in determining the makeup of their school communities and will provide counties with flexibility in staffing schools to meet changing needs and enrollment.

**§126-126-3. Application.**

3.1. These regulations apply to the filling of vacancies for classroom teachers and the transfers of employees by county boards of education in the limited instances set forth herein and is not a comprehensive hiring manual for all public school employees.

**§126-126-4. Definitions.**

4.1. County board of education - Pursuant to W. Va. Code §18-5-1, the 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.

4.2. Classroom teacher - A professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity.

4.3. Classroom teaching position - A position posted pursuant to W. Va. Code §18A-4-7a to fill a vacancy for a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity.

4.4. Faculty senate - As provided by W. Va. Code §18-5A-5, a faculty senate consists of all permanent, full-time professional educators employed at the school.

4.5. Permanently employed instructional personnel - Professional educators who are employed by a county board of education under either a probationary or continuing contract of employment and who, as part of their employment, have instructional duties.

4.6. Principal - A professional educator employed pursuant to W. Va. Code §18A-2-9 who has administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he or she is assigned.

4.7. Service employee - Service person, service personnel, or service employee means any nonteaching school employee who is not included in the meaning of teacher as defined W. Va. Code §18-1-1 and who serves the school or schools as a whole in a nonprofessional capacity including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides.

#### **§126-126-5. Roles and Responsibilities.**

5.1. Among the other roles and responsibilities assigned to the following individuals and entities by operation of statute or West Virginia Board of Education [WVBE] policy, for purposes of this policy, the following individuals and entities shall exercise the roles and responsibilities set forth below.

5.1.a. West Virginia Department of Education [WVDE] - The WVDE shall designate or approve an interview training tool(s) which shall be completed by a faculty senate member and principal prior to his or her participation in an interview. The targeted duration of the training is one hour.

5.1.b. County Board of Education - The county board of education shall make decisions affecting the filling of vacancies in professional positions of employment other than the county superintendent on the basis of the applicant with the highest qualifications as set forth in statute and in this policy.

5.1.c. Superintendent - The superintendent shall receive hiring recommendations for classroom teaching positions from principals and faculty senates and shall nominate and recommend applicants to the county board of education. The superintendent may, at his or her discretion, conduct interviews of applicants for vacancies in addition to any interview conducted by the principal and faculty senate hiring committee, single designee, or faculty senate chair.

5.1.d. Principal - The principal shall submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the school or schools under said principal's control. Such recommendation shall be submitted in writing as prescribed by the superintendent. Additionally, the principal shall receive hiring recommendations from the faculty senate at his or her school as provided in this policy and shall submit those recommendations

in writing as prescribed by the superintendent. In the event that a principal is unable to submit hiring recommendations or receive hiring recommendations from the faculty senate as set forth in this policy due to illness or absence, the assistant principal shall submit hiring recommendations. If there is no assistant principal, the superintendent shall assign a designee to carry out the role of the principal. In the event that a principal is unable to submit hiring recommendations or receive hiring recommendations from the faculty senate due to a conflict as set forth in W. Va. Code §18A-2-1(a)(2), the superintendent shall assign a designee from the central office to carry out the role of the principal. Whenever possible, the designee from the central office shall be a coordinator in the same programmatic level as the position to be filled. If it is not possible or practical to designate a coordinator from the same programmatic level, the recommendation of the designee shall not be invalidated or be the basis for objection by any prospective employee or any other person. If a principal or his or her designated replacement does not participate in the hiring process as set forth in this policy for a particular vacancy, the right of the principal to submit recommendations regarding employment is forfeited for that vacancy. However, if a principal or his or her designated replacement does not participate in the hiring process as set forth in this policy, the principal or his or her designee must still receive any hiring recommendation made by the faculty senate and transmit that recommendation to the superintendent. A forfeiture of the principal's right to submit a hiring recommendation shall not be the basis for objection by any prospective employee or any other person.

5.1.e. Faculty Senates - Faculty senates may choose one of the options set forth in this policy as a mechanism by which to make hiring recommendations to the school principal. If a faculty senate does not participate in the hiring process as set forth in this policy for a particular vacancy, the right of the faculty senate to submit recommendations regarding employment is forfeited for that vacancy. A forfeiture of the faculty senate's right to submit a hiring recommendation shall not be the basis for objection by any prospective employee or any other person.

**§126-126-6. Criteria for Hiring Classroom Teachers.**

6.1. A county board of education shall make decisions affecting the filling of vacancies for classroom teachers on the basis of the applicant with the highest qualifications.

6.2. In judging qualifications for the filling of vacancies for classroom teachers, consideration shall be given to each of the following:

6.2.a. Appropriate certification, licensure or both;

6.2.b. Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

6.2.c. The amount of course work, degree level or both in the relevant field and degree level generally;

6.2.d. Academic achievement;

6.2.e. In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

6.2.f. Specialized training relevant to the performance of the duties of the job;

6.2.g. Past performance evaluations conducted pursuant to W. Va. Code §18A-2-12 and 18A-3C-2 or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession as a certified educator;

6.2.h. Seniority;

6.2.i. Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

6.2.j. The recommendation, if any, of the principal of the school at which the applicant will be performing a majority of his or her duties; and

6.2.k. The recommendation, if any, resulting from the process established by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

6.3. If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under section 6.2 shall be given equal weight except that the criterion in subdivisions 6.2.j and 6.2.k shall each be double weighted. This shall apply when the faculty senate and the principal do not agree on a recommendation, when either the faculty senate or principal forfeit or cannot make a recommendation, or when the superintendent does not concur with the recommendation of the principal and the faculty senate.

6.4. For a classroom teaching position, if the recommendations resulting from the operations of sections 6.2.j and 6.2.k are for the same applicant, and the superintendent concurs with that recommendation, then the other provisions of sections 6.2 and 6.3 do not apply and the county board shall appoint that applicant notwithstanding any other provision of this policy to the contrary.

6.5. Recommendations made pursuant to sections 6.2.j and 6.2.k shall be made based on a determination as to which of the applicants is the highest qualified for the position. When making recommendations, principals and faculty senates shall consider each criterion listed in sections 6.2.a. through 6.2.i. Neither principals nor faculty senates are required to assign any amount of weight to any factor. Principals and faculty senate chairs or single designees shall complete the applicable hiring recommendation forms (see Appendices A and B) and shall submit a completed form as documentation of the recommendation. Other than the recommendation form, no other matrix or documentation of the selection shall be required.

6.6. Any professional educator who is employed within the public school system of this state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels shown on the certificate for the period of his or her employment.

6.7. As provided in W. Va. Code §18-5A-5(b)(2), the processes and procedures set forth in this policy are designed to be effective and consistent among schools and counties and are designed to avoid litigation or grievance. To that end, this policy is designed to allow teachers to be meaningfully involved in the hiring recommendation process in an open and honest manner without fear of reprisal, retaliation or coercion and to minimize lost instructional time and classroom disruption.

6.8. These criteria shall be utilized in making hiring decisions for any classroom teacher hired on or

after July 1, 2013.

**§126-126-7. Faculty Senate Recommendation Process.**

7.1. A faculty senate may establish a process for members to interview or otherwise obtain information regarding applicants for classroom teaching vacancies that will enable the faculty senate to submit recommendations regarding employment to the principal. A faculty senate wishing to submit hiring recommendations to the principal shall utilize one of the processes set forth below. These processes and procedures are designed to be effective and consistent among schools and counties and are designed to avoid litigation or grievance. At the conclusion of each school semester a faculty senate may vote to change its adopted process for the next ensuing semester. Additionally, if a faculty senate desires to make hiring recommendations over the summer break, it may use the process then in place, if any, or it may vote to adopt a different process to be used only during the summer break. Nothing herein shall be construed to require a faculty senate to participate in the recommendation process, however, failure to participate as provided below will cause the right of the faculty senate to make employment recommendations to be forfeited.

7.1.a. Hiring Committee

7.1.a.1. The majority of the faculty senate may elect a committee, including a committee chair, which will be responsible for making hiring recommendations regarding classroom teachers. Committees and chairs shall be elected by the faculty senate according to one of the following models:

7.1.a.1.A. Three individuals, which shall include a chair, elected by the majority of the members of the faculty senate; or

7.1.a.1.B. Not less than seven nor more than eleven individuals, which shall include a chair, elected by a majority of the faculty senate.

7.1.a.1.B.1. When electing the committee members, the faculty senate should give consideration to selecting individuals who represent the spectrum of curriculum and content areas taught at the school, provided that the failure of the faculty senate to select individuals who represent the spectrum of curriculum and content areas at the school shall not invalidate their election or any subsequent recommendation they render.

7.1.a.1.B.2. When utilizing this option, the committee chair shall select three members from the larger committee to form a panel which will make a recommendation for each classroom teacher to be hired. The selection of the three members shall be based, as far as is practical, on the subject matter to be taught by the teacher to be hired as determined on a case by case basis. The failure of the committee chair to select three members based on the subject matter to be taught by the new teacher will not invalidate the faculty senate's selection or be the basis for objection by any prospective employee or any other person. The committee chair shall be responsible for ensuring that the hiring recommendation made by the three person panel is delivered to the principal in a timely manner.

7.1.b. Single Designee

7.1.b.1. The majority of the faculty senate may elect a single designee who will be

responsible for making hiring recommendations regarding classroom teachers. In choosing the single designee model, the faculty senate shall select one of the following options:

7.1.b.1.A. The single designee shall have the discretion to ask up to two other faculty senate members to assist him or her in reviewing relevant application materials or interviewing applicants at his or her discretion. The selection of assistants by the single designee shall be based, as far as is practical, on the subject matter to be taught by the teacher to be hired as determined on a case by case basis. The additional faculty senate members must have completed the WVDE designated or approved interview training prior to assisting the single designee. Failure of the single designee to select additional faculty senate members to assist him or her in rendering a recommendation will not invalidate the designee's recommendation or be the basis for objection by any prospective employee or any other person. The single designee shall be responsible for ensuring that the recommendation is delivered to the principal in a timely manner.

7.1.b.1.B. The single designee shall ask up to two other faculty senate members to assist in reviewing relevant application materials or interviewing applicants at the designee's discretion. The selection of assistants by the single designee shall be based, as far as is practical, on the subject matter to be taught by the teacher to be hired as determined on a case by case basis. The additional faculty senate members must have completed the WVDE designated or approved interview training prior to assisting the single designee. Failure of the single designee to select additional faculty senate members to assist him or her in rendering a recommendation shall invalidate the designee's recommendation. The single designee shall be responsible for ensuring that the recommendation is delivered to the principal in a timely manner.

7.2. For purposes of considering and making hiring recommendations, the following rules shall apply to faculty senates:

7.2.a. The principal will notify the chair of the hiring committee or the single designee in writing when the list of candidates meeting the minimum qualifications listed in the job posting for a classroom teaching position is final and will provide the chair of the hiring committee or the single designee with a list of the candidates and relevant application materials. A faculty senate may, but is not required, to adopt a policy permitting the superintendent or his or her designee to narrow the pool of qualified applicants to no fewer than three qualified applicants, unless fewer than three qualified individuals apply, who appear to be the most qualified based on an examination of the factors set forth in W. Va. Code §18A-4-7a(b)(1) through (9). Within twenty-four hours of such notice, the hiring committee chair or single designee will notify the principal in writing if an interview of candidates is requested. For purposes of this section, electronic mail communications shall satisfy the requirement of providing written notification. Further, for purposes of this section and this policy, interviews shall be permitted to occur in-person or via telephone, teleconference or other virtual means.

7.2.b. A faculty senate hiring committee or single designee may consider and make recommendations after reviewing the application materials provided without participation in an interview. All application materials shall be maintained confidentially by all parties and shall not be disclosed or discussed in any manner with individuals who are not part of the hiring/recommendation process for an individual teacher. All application materials shall be returned to the principal by the hiring committee chair or single designee at the time the recommendation is delivered to the principal.

7.2.c. If a request for an interview is made, then a faculty senate hiring committee or single

designee may consider and make recommendations after participating in interviews of candidates for classroom teaching positions, subject to the following:

7.2.c.1. Prior to participating in interviews or otherwise participating in the recommendation process, a faculty senate member must complete interview training as designated or approved by the West Virginia Department of Education. Once a faculty senate member has completed the designated interview training, additional training shall not be required unless the WVDE or superintendent determines that additional training shall occur.

7.2.c.2. The principal will notify the hiring committee members or single designee in writing of the time and place that the interview will be conducted. For purposes of this section, electronic mail communications shall satisfy the requirement of providing written notification. In determining when and where interviews will occur, consideration shall be given to accommodating the time and travel needs of the applicants and the faculty senate members. Interviews shall be scheduled in such a way that faculty senate members can participate while also minimizing classroom disruption to the greatest extent possible. Whenever possible, interviews shall be conducted at the school where the applicant will spend the majority of his or her instructional time. However, the superintendent or his or her designee shall have the authority to conduct interviews at alternate locations if necessary.

7.2.c.3. Interviews of applicants will be conducted jointly with the principal, however, hiring committee members or single designees shall have the authority to deliberate and make their hiring selections separate and apart from the principal.

7.2.c.4. In asking questions during an interview, each applicant shall be asked an identical set of initial questions. The questions to be asked may be determined jointly by the principal and the hiring committee or single designee or, in the alternative, the principal and the hiring committee or single designee may prepare questions independently of one another. Provided, that nothing herein shall prohibit the asking of unique follow-up questions to each applicant based on his or her responses to the uniform set of initial questions. The asking of unique follow-up questions to each applicant based on his or her responses to the uniform set of initial questions will not invalidate the recommendation or selection of the applicant by either the superintendent, principal, hiring committee, single designee, or faculty senate chair and shall not be the basis for objection by any prospective employee or any other person so long as those questions do not violate federal or state employment laws.

7.2.d. A hiring committee chair or a single designee must submit a recommendation to the principal within the following timelines:

7.2.d.1. Where no interview is requested by the hiring committee or single designee, three days after receipt of application materials.

7.2.d.2. Where an interview is requested and conducted, within two days of the completion of interviews for a position.

7.2.d.3. The timelines set forth above may be shortened by the superintendent if necessary to comply with the timelines for filling positions set forth in W. Va. Code §18A-4-7a. The timelines may also be shortened to meet other hiring needs of the county school system with the approval of the hiring committee chair or single designee.



7.2.e. Nothing in this policy or in statute requires that any applicant be interviewed prior to being recommended or selected to fill a vacancy and nothing requires that every applicant meeting the minimum qualifications of a posting be interviewed prior to being recommended or selected to fill a vacancy. However, the superintendent, principal, hiring committee, or single designee, as applicable, shall each have the authority to interview qualified job applicants at their discretion. A faculty senate may, but is not required, to adopt a policy permitting the superintendent or his or her designee to narrow the pool of qualified applicants to no fewer than three qualified applicants, unless fewer than three qualified individuals apply, who appear to be the most qualified based on an examination of the factors set forth in W. Va. Code §18A-4-7a(b)(1) through (9).

7.3. Classroom teachers who directly participate in making recommendations for filling classroom teaching positions pursuant to the options set forth in this policy for periods beyond his or her individual contract shall be compensated based on his or her daily rate of pay, prorated to an hourly rate. The principal shall require that the participating teachers keep time sheets documenting the actual time spent on the recommendation process and shall verify that the time sheets are accurate before submitting them for payment. In no event shall a teacher be entitled to payment for more than two hours per position. However, if there are more than four qualified applicants for a single classroom teacher position who are selected for an interview by the hiring committee chair or single designee, the faculty senate members participating in the interviews may be compensated for an additional hour for actual time spent on the interview process for that position.

7.4. For purposes of this policy, an itinerant teacher shall be considered to be assigned to the school where he or she spends the majority of his or her instructional time. If an itinerant teacher does not spend the majority of his or her instructional time in any one school, the itinerant teacher shall be considered to be assigned to a school as designated by the county superintendent.

7.5. The West Virginia Ethics Act prohibits public school employees from participating in any hiring decisions involving relatives or cohabitating sexual partners. "Relatives" are defined as individuals who are related to the employee as father, mother, son, daughter, brother, sister, spouse, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law. If a faculty senate representative must recuse himself or herself for this reason, an alternate member may be appointed by the committee chair or the single designee.

#### **§126-126-8. Training for Faculty Senates and Principals.**

8.1. Prior to participating in an interview or otherwise making any hiring recommendations pursuant to this policy, faculty senate hiring committees, single designees, any other faculty senate participants, and principals must complete interview training as designated or approved by the WVDE. Once a faculty senate member or principal has completed the designated interview training, additional training shall not be required unless the WVDE or superintendent determines that additional training shall occur.

8.2. Compensation for participation in training shall be based on the daily rate of pay for the participating classroom teacher who directly participated in the training for periods beyond his or her individual contract. Compensation for training shall not exceed one hour.

8.3. For the 2013-2014 school year only, principals have until September 1 to complete the interview training designated or approved by the WVDE.

**§126-126-9. Reassignment of Surplus Personnel Without Posting Based on Pupil-Teacher Ratio and Class Size Rules.**

9.1. When actual student enrollment in a grade level or program, unforeseen before ~~March 1~~ May 1 of the preceding school year, permits the assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio, class size or caseload standard established in W. Va. Code §18-5-18a or any policy of the WVBE, the county superintendent, with board approval, may reassign the surplus personnel to another school or to another grade level or program within the school if needed there to comply with any such pupil-teacher ratio, class size or caseload standard.

9.1.a. Before any reassignment may occur pursuant to this subsection, written notice shall be provided to the employee via certified mail or hand delivery at least 10 days prior and the employee shall be provided an opportunity to appear before the county board to state the reasons for his or her objections, if any, prior to the board voting on the reassignment. The opportunity to be heard shall not be a hearing with the right to present witnesses, rather, it is an opportunity for the employee to concisely state his or her objections to the board. The reassignment may be made without following the notice and hearing provisions of W. Va. Code §18A-2-7(a) and (b) and may occur at any time during the school year when the conditions in section 9.1 are met. However, reassignments may not occur after the last day of the second school month.

9.1.b. A professional employee reassigned under this subsection shall be the least senior of the surplus professional personnel who holds certification or licensure to perform the duties at the other school or at the grade level or program within the school.

9.1.c. A service employee reassigned under this subsection shall be the least senior of the surplus personnel who holds the same classification or multiclassification needed to perform the duties at the other school or at the grade level or program within the same school. In considering whether an aide is a surplus employee, the county shall consider each classification and/or multiclassification held by him or her and shall not be limited only to the current program or assignment held by the surplus aide.

9.1.d. No school employee's annual contract term, compensation or benefits shall be changed as a result of a reassignment under this subsection.

**§126-126-10. Reassigning Classroom Teachers Within a School Without Posting.**

10.1. Notwithstanding any other provision of W. Va. Code to the contrary, upon recommendation of the principal and approval by the classroom teacher, county superintendent, and county board, a classroom teacher assigned to the school may at any time during the school year be assigned to a new or existing classroom teacher position at the school during that school year without the position being posted. ~~This provision shall not apply to vacancies that will occur in the ensuing year or other future years.~~

10.2. Transfers made under these provisions are not subject to the limitation on transfers found in W. Va. Code ~~§18A-4-7a(m)~~ 18A-2-7b.

10.3. For purposes of this section, an itinerant teacher shall be considered to be assigned to the school where he or she spends the majority of his or her instructional time. If an itinerant teacher does

not spend the majority of his or her instructional time in any one school, the itinerant teacher shall be considered to be assigned to a school as designated by the county superintendent.

**§126-126-11. Reposting of Professional Vacancies.**

11.1. Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three qualified individuals apply during the first posting.

11.2. If no applicant meets the qualifications set forth in the job posting, a board may continue to post or repost as set forth in section 11.1 without limitation.

11.3. The county superintendent of schools shall have the authority to determine whether a professional position will be reposted.

11.4. These provisions shall apply to both professional positions and extra-curricular positions.

**§126-126-12. Reserving Vacancies for Individuals Subject to Release.**

12.1. ~~All employees subject to release shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the next ensuing school year, and for which they are qualified, and, upon recommendation of the superintendent, the board shall appoint the successful applicant from among them before posting such vacancies for application by other persons.~~ For any vacancy in an established, existing or newly created position that, on or before March 1 is known to exist for the ensuing school year, the county board of education shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application for nonemployees. This provision shall not preclude a county board of education from posting and filling vacancies that exist in the current school year nor shall it supersede or alter the operation of W. Va. Code §18A-4-8f or §18A-4-8i.

12.2. An employee shall be considered subject to release if the superintendent would recommend the individual to the board for release but for the availability of the known position.

12.3. A vacancy for a position that will exist on the first day of the next ensuing school year will be known to exist when the person holding the position has submitted his or her resignation or retirement to the board, in writing, and the resignation or retirement has been accepted by the board.

12.4. Newly created positions will not be considered to be known to exist until the county board has voted to approve their creation.

12.5. For purposes of this section, an individual will be considered to be qualified for a known vacancy if he or she fully meets the qualifications for the vacancy.

12.6. If more than one individual ~~subject to release~~ applying for a known vacancy pursuant to this section is qualified for ~~a known~~ the vacancy, the successful candidate shall be selected based

on ~~application of the factors~~ the criteria set forth in ~~W. Va. Code §18A-4-7a(b)(1) through (9), weighted equally~~ section 6 of this policy.

12.7. This provision shall apply to vacancies and newly created positions known to exist on or before February 15, 2014, and in subsequent school years.

**§126-126-13. Severability.**

13.1. 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.

Appendix A

The following form shall be completed by the principal and shall be submitted as set forth in section 6.6. of WVBE Policy 5000 and according to timelines as determined by the county superintendent.

**Principal Recommendation:**

In accordance with section 6.2 of WVBE Policy 5000, the undersigned certifies that the qualifications of the selected applicants meeting the minimum qualifications/requirements set forth in the job posting for the position of \_\_\_\_\_ have been reviewed.

In determining which of the applicants is the highest qualified for the position, the following factors set forth in sections 6.2.a. through 6.2.i. of WVBE Policy 5000 have been considered:

- a. Appropriate certification, licensure or both;
- b. Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;
- c. The amount of course work, degree level or both in the relevant field and degree level generally;
- d. Academic achievement;
- e. In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;
- f. Specialized training relevant to the performance of the duties of the job;
- g. Past performance evaluations conducted pursuant to W. Va. Code §18A-2-12 and 18A-3C-2 or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession as a certified educator;
- h. Seniority;
- i. Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

I recognize that no amount of weight is required to be assigned to any factor in making a recommendation and further recognize that a factor may be assigned no weight at all.

Other than this recommendation form, no other matrix or documentation of my recommendation shall be required.

Pursuant to this review as principal or designated representative of the principal of the school at which the applicant will be performing a majority of his or her duties, I hereby recommend \_\_\_\_\_ for the above-referenced position.

Date: \_\_\_\_\_

\_\_\_\_\_  
Principal / Designee

Appendix B

The following form shall be completed by the faculty senate hiring committee chair or single designee and shall be submitted as set forth in sections 6.6. and 7.2.d. of WVBE Policy 5000.

**Faculty Senate Recommendation:**

In accordance with section 6.2 of WVBE Policy 5000, the undersigned certify that the qualifications of the selected applicants meeting the minimum qualifications/requirements set forth in the job posting for the position of \_\_\_\_\_ have been reviewed.

In determining which of the applicants is the highest qualified for the position, the following factors set forth in sections 6.2.a. through 6.2.i. of WVBE Policy 5000 have been considered:

- a. Appropriate certification, licensure or both;
- b. Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;
- c. The amount of course work, degree level or both in the relevant field and degree level generally;
- d. Academic achievement;
- e. In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;
- f. Specialized training relevant to the performance of the duties of the job;
- g. Past performance evaluations conducted pursuant to W. Va. Code §18A-2-12 and 18A-3C-2 or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession as a certified educator;
- h. Seniority;
- i. Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

I/we recognize that no amount of weight is required to be assigned to any factor in making a recommendation and further recognize that a factor may be assigned no weight at all.

Other than this recommendation form, no other matrix or documentation of this recommendation shall be required.

Pursuant to this review, the faculty senate of the school at which the applicant will be performing a majority of his or her duties has recommended \_\_\_\_\_ for the above-referenced position. This recommendation is based on the majority vote of those members participating in the recommendation process or on the recommendation of the single designee.

Date: \_\_\_\_\_

\_\_\_\_\_  
Faculty Senate Hiring Committee Chair or Single Designee

\_\_\_\_\_  
Faculty Senate Representative (if applicable)

\_\_\_\_\_  
Faculty Senate Representative (if applicable)

126CSR126

**POLICY 5000, Procedures for Designated Hiring and Transfer of School Personnel**

**COMMENT PERIOD ENDS: April 10, 2017**

**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 5000, Procedures for Designated Hiring and Transfer of School Personnel. Additional sheets may be attached, if necessary.

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Title: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Please check the box below that best describes your role.

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> School System Superintendent | <input type="checkbox"/> School System Staff | <input type="checkbox"/> Parent/Family     |
| <input type="checkbox"/> Principal                    | <input type="checkbox"/> Teacher             | <input type="checkbox"/> Business/Industry |
| <input type="checkbox"/> Professional Support Staff   | <input type="checkbox"/> Service Personnel   | <input type="checkbox"/> Community Member  |



<b>COMMENTS/SUGGESTIONS</b>
<b>§126-126-9.1. Reassignment of Surplus Personnel Without Posting Based on Pupil-Teacher Ratio and Class Size Rules.</b>
<b>§126-126-10.1. Reassigning Classroom Teachers Within a School Without Posting.</b>

**126CSR126**

**§126-126-10.2. Reassigning Classroom Teachers Within a School Without Posting.**

**§126-126-12.1. Reserving Vacancies for Individuals Subject to Release.**

**§126-126-12.6. Reserving Vacancies for Individuals Subject to Release.**

Please direct all comments to:

Heather Hutchens, General Counsel  
Office of Legal Services  
West Virginia Department of Education  
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1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0330  
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