



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education TITLE-SERIES: 126-035

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Instructional Resources (2445.40)

CITE STATUTORY 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); and, W. Va. Bd. of Educ. V. Bd. of Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

August 12, 2019

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

William C Burch -- 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.

126CSR35

**TITLE 126
LEGISLATIVE RULE**

**BOARD OF EDUCATION
SERIES 35
INSTRUCTIONAL RESOURCES (2445.40)**

§126-35-1. General.

1.1. Scope. -- This legislative rule provides for the transition from the West Virginia Board of Education (WVBE) to the county board level the process for review and adoption of instructional resources required to be used in the schools under the jurisdiction of the county board and for the instructional resources groupings I-VI for the required subjects taught in pre-kindergarten through grade 12 (pre-k-12) education.

1.2. Authority. -- W. Va. Constitution, Art. XII, §2, W. Va. Code §§18-2-5, 18-2-8, 18-2A-10, and 18-5-21.

1.2.a. Book Fees Prohibited (1995). – The “free schools” clause in W. Va. Constitution, Article XII, §1, prevents local school authorities from charging students and their parents a fee for the use of necessary textbooks. *Randolph County Board of Education v. Adams*, 196 W. Va. 9, 467, S.E.2d 150.

1.3. Filing Date. -- July 11, 2019.

1.4. Effective Date. -- August 12, 2019.

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W.Va. 126CSR35, Policy 2445.40, Adoption, Use, and Groupings of Instructional Resources for Grades Pre-Kindergarten through Grade 12, filed January 11, 2013, and effective February 11, 2013, repeals W. Va. 126CSR36, Policy 2445.41, Instructional Resources Adoption: Notice, Request, and Instruction to Publishers, filed February 9, 2012, and effective March 12, 2012, and repeals as a stand-alone policy W.Va. 126CSR34, Policy 2445.4A, Resolution Regarding U.S. District Court Order, filed October 17, 1986, and effective October 17, 1986.

§126-35-2. Purpose.

2.1. The WVBE is committed to providing a smooth transition from the WVBE to the county board level the process for review and adoption of instructional resources required to be used in the schools under the jurisdiction of the county board. For instructional resources adopted by a county board for use in the school year beginning July 1, 2019, and successive school years, nothing in this section limits or prevents a county board from adopting instructional resources approved and included on the current WVBE-approved state multiple lists under those provisions for the duration of the adoption cycle if it chooses to do so.

§126-35-3. County Responsibilities.

3.1. Each county board shall furnish free of charge the necessary instructional resources to students

attending the public schools in that county. A county board choosing to furnish electronic instructional resources to its students and teachers shall provide reasonable access to these resources and the necessary computer equipment to students for completing assignments that require using the resources and equipment. All instructional resources furnished as provided in this section shall be the property of the county board and loaned to students and teachers on terms as each board prescribes.

3.2. Every county board shall adopt a policy regarding the adoption of instructional resources which shall include, at a minimum, the following:

3.2.a. The process for reviewing instructional resources to ensure the resources meet the non-negotiable requirements established by the WVBE and cover no less than 80% of the required content and skills for a subject as approved by the WVBE. A county board may rely on an instructional material review completed by the West Virginia Department of Education (WVDE) to fulfill this requirement;

3.2.b. The composition, duties, and responsibilities of the county's instructional resource review committee;

3.2.c. The process for recommending instructional resources that are proposed for adoption;

3.2.d. At a properly noticed meeting, the county board's determination by a majority vote of all members elected which instructional resources shall be required in the schools under its control; and

3.2.e. An annual report of instructional resources adopted submitted to the WVBE by June 1.

3.3. The State Superintendent shall annually provide to all county boards a list of all vendors that have provided a statement in accordance with §6 of this rule. This list shall be called the *West Virginia List of Registered Vendors of Instructional Resources*.

3.4. A county board may not adopt or cause to be used in the public schools any instructional resource unless the person, firm, or corporation offering the instructional resource for adoption or use has complied with this section of the policy, except for the adoption of instructional resources approved and included on the current state multiple list.

3.4.a. If a county board wishes to use free-of-charge, Open Educational Resources (OER), or county board-created primary instructional resources, the county board must complete the Vendor Registration to appear on the *West Virginia List of Registered Vendors of Instructional Resources* for these materials created. The county board must provide alignment and review documentation for materials adopted.

3.4.a.1. The county will ensure any OER instructional resources adopted shall meet the accessibility guidelines found in §6.6.

3.5. If a person, firm, or corporation files a statement to provide instructional materials and fails or refuses to furnish the instructional resources to any county board in accordance with the terms provided in the statement, the county board at once shall notify the State Superintendent of the failure or refusal. If the State Superintendent verifies the failure or refusal, the State Superintendent shall disqualify the person, firm, or corporation and notify each county board that the providers instructional resources may not thereafter be adopted and purchased by any county board until the person, firm, or corporation is

requalified.

3.6. This policy does not apply to the purchase of supplementary instructional resources, including, but not limited to, reading books, library books, reference books, or other supplementary instructional resources. These supplementary instructional resources shall be ordered, received, examined, and paid for in the same manner and by the same persons as other supplies and equipment.

3.7. A county board member or employee may not act as sales agent or benefit personally by sales, either directly or indirectly, for any person, firm, or corporation that files an instructional resources statement with the State Superintendent.

3.8. All contracts for instructional resources will be between the county board and the vendor.

§126-35-4. Gifts and Bribes to Influence Adoption of Instructional Resources A Felony; Penalty.

4.1. Per W. Va. Code §18-2A-9, “Any member of the state board, any county superintendent, any member of a county board or any other person who shall receive, solicit, or accept any gift, present, or thing of value to influence that individual in the vote for the adoption of instructional resources, print or electronic, or any combination thereof, or any person who shall either directly or indirectly give or offer to give any such gift or thing of value to any person to influence that individual in voting for the adoption of instructional resources, printer or electronic, or any combination thereof, shall be guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year and nor more than three years.”

§126-35-5. Grouping of Instructional Resources.

5.1. Per W. Va. Code §18-2A-10(c), the WVBE establishes the Adoption Groups for required subjects to be taught in grades pre-k-12 as listed below:

5.2. Adoption Groups I-VI.

Adoption Group	Content Areas
I	WV Pre-K Social Studies
II	The Arts Wellness Education Drivers Education
III	English Language Arts
IV	Science
V	World Languages Student Success Technology and Computer Science
VI	Mathematics

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

5.4. The adoption schedule shall be available on the WVDE Instructional Resources website.

§126-35-6. Flowchart of Instructional Resources Events.

Flowchart of Instructional Resources Events	
August	WVBE releases criteria for current adoption cycle.
September 1 – January 1	State Superintendent establishes vendor registration period for the <i>West Virginia List of Registered Vendors of Instructional Resources</i> .
September 1 – December 1	Vendors may submit materials to WVDE Instructional Resource Review Committee (IRRC) for review (optional).
December – January	IRRC completes review of resources per vendor request. WVBE annually provides to all county boards a list of vendors that have met requirements of W. Va. Code §18-2A-10.
January 1 - May	County boards review registered resources.
March	WVDE releases IRRC Resource Review results.
June 1	County boards submit an annual report of adopted and purchased instructional resources that have been approved by their local boards to WVBE. County alignment and review documentation shall also be submitted.
Summer	WVBE sets criteria for next adoption cycle.
August	WVBE releases criteria for upcoming adoption cycle.
Fall	Newly adopted instructional resources are in classrooms.

§126-35-7. Responsibilities of Vendors of Print and Digital Instructional Resources.

7.1. A vendor must complete Vendor Registration by January 1st in order to appear on the *West Virginia List of Registered Vendors of Instructional Resources*. Registration information is located on the WVDE Instructional Resources website.

7.1.a. Registration Forms. All registrations must be submitted electronically on the official WVDE registration site. Vendors must complete all sections of the registration form. Upon completing an online registration submission, a signature sheet including the vendor's authorized signature must be mailed to the WVDE in accordance with the directions on the form. The registration templates and examples are available on the WVDE website. Alternatively, vendors may request that the link to the online registration template be sent to them via email.

7.2. Instructional resources, including print materials, electronic resources and systems, kit-based instructional materials, or any combination submitted by a vendor and placed on the *West Virginia List of Registered Vendors of Instructional Resources* must substantially cover the required content and skills for the subject as approved by the WVBE as a primary source of instruction. Adopted resources must be current and information presented accurately; therefore, resources may be updated, substituted, or otherwise changed and improved to ensure they are current and accurate. Copyright dates of instructional resources being registered must not be more than three years prior to the beginning date of the adoption period.

7.2.a. Criteria. Non-negotiable, general, and specific evaluation criteria for the current adoption program(s) shall be furnished by the WVBE to each registrant electronically. Instructional resources must

meet 100% of the non-negotiable criteria, 80% of the general criteria, and 80% of the specific criteria for a county board to adopt the resource as the primary instructional resource. Vendors are required to provide criteria correlation documents in paper and electronic format for print and non-print, including specific locations for each criterion to the WVDE and county boards by January 1 of the adoption year, using the WVDE-provided forms. If the resources do not address the outlined criteria, this fact must be noted on the form as "No." These documents shall be used to evaluate instructional resources that will be considered by county boards' local review committees in their selection process.

7.3. The WVDE and county boards may request samples and prices on items deemed appropriate to teach the curriculum. These items must be usable in the public schools as the primary source to deliver the current standards that have been further refined into generic and specific criteria for the respective subject.

7.4. Teacher Edition. Vendors are required to provide teacher's editions/manuals which contain the teacher's edition/manual/curriculum, etc., for counties adopting and purchasing instructional resources at the ratio of one per classroom at the early and middle childhood levels and one per teacher for every 25 student editions purchased at the adolescent level. Counties, schools, and teachers requesting teacher editions in excess of this requirement should expect to pay the current registration price. Electronic teacher editions may be supplied in lieu of print versions when digital or online versions of learning technologies or other digital or online instructional resources are adopted.

7.4.a. Teacher editions/manuals and pricing must be included in the registration form to allow counties to purchase additional copies. The vendor grants each school duplication rights for classroom use only within the limitation(s) of current copyright laws.

7.4.b. Assessments and other ancillary materials and pricing must be included in the registration form. The vendor grants each school duplication rights for classroom use only within the limitation(s) of current copyright laws.

7.5. Vendors shall provide Lexile Measures for student editions of all resources in all content areas approved for use as primary instructional resources. Vendors shall provide Quantile Measures for all student editions approved as primary instructional resources for mathematics and, when applicable, for all student editions approved as primary instructional resources for science courses by February 1 of the adoption year from the date of publication of the *West Virginia List of Registered Vendors of Instructional Resources*. Vendors shall bear the cost of obtaining Lexile and Quantile Measures.

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

7.6.a. Accessibility Statements. Successful vendors of student non-print materials shall meet student accessibility guidelines. All content must comply with the Americans with Disabilities Act of 1990, amended Section 508 of the Rehabilitation Act of 1973, and the Web Content Accessibility Guidelines (WCAG) 2.0.

7.6.a.1. The county board will ensure any OER instructional resources adopted shall meet the accessibility guidelines found in this section.

7.6.b. Inter-Ethnic Statements. Vendors of instructional resources must accurately portray minority and ethnic group contributions to American growth and culture. These resources must depict and illustrate the intercultural character of America's pluralistic society.

7.7. Rejection of Registrations and/or Free Items. The State Superintendent reserves the right to accept and reject any and all registrations or any part of a registration or free item.

7.8. Shipment. County boards and schools have the option to purchase instructional resources directly from a vendor and have the resources shipped directly to the county boards, school(s), or dealer appointed by the county board, or purchase through a depository at the registration price.

7.8.a. Shipment to a county board, school(s), or dealer shall require the vendor to bear the costs of shipping, mailing, or transporting, including any other benefits provided to any county or school in West Virginia or in another state.

7.8.b. Vendors can make their product(s) available for distribution through any WVBE-approved depository(ies) that is (are) determined to be qualified to warehouse, manage, and distribute such product(s). Shipping costs and/or transportation to county boards/schools/dealers shall be provided without charge and borne by agreement between the vendor and state-approved depository(ies).

§126-35-8. West Virginia Instructional Resources Review Committee (IRRC) Requirements.

8.1. If a vendor wishes to have a review completed by the IRRC, the correlation documents, along with samples of the instructional resources and access to all online resources, must be received by the IRRC prior to December 1 of the adoption year. These documents shall be used during the review of the instructional resources. Failing to submit required documentation within the timeline could result in an incomplete review of the product.

8.2. WVDE will provide counties with a summary review of any products submitted by vendors and reviewed by the IRRC.

§126-35-9. Services to Counties and Schools.

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

9.2. Failure of vendor to comply with this policy requirements, the West Virginia Ethics Act, and all state and county purchasing requirements may result in disqualification from the current adoption year and subsequent removal of any/all products from the *West Virginia List of Registered Vendors of Instructional Resources*.

§126-35-10. Glossary of Terms.

10.1. Criteria. The means for reviewing instructional resources.

10.1.a. Non-Negotiable Criteria. Ensure that primary instructional resources meet the equity, accessibility, and format requirements of inter-ethnic, equal opportunity, format, bias, and freedom from reference to Common Core State Standards (per WV Code §18-2E-1b-1). All primary instructional resources must meet 100% of the Non-Negotiable Criteria.

10.1.b. General Criteria. Consist of information critical to be included at all grade levels and include items such as thinking and problem-solving skills, information and communication skills, personal and workplace productivity skills, developmentally appropriate instructional resources and strategies, career development and global citizenship, assessments, organization, presentation, and format. All primary instructional resources must meet at least 80% of the General Criteria.

10.1.c. Specific Criteria. Consist of the current West Virginia College- and-Career-Readiness Standards for a given content area. All primary instructional resources must meet at least 80% of the Specific Criteria.

10.2. Instructional Resources. Print materials, electronic resources and systems, kit-based instructional materials, or combinations of such instructional resources which convey information to a student that covers no less than 80% of the required content and skills approved by the WVBE for subjects taught in the public schools of the state.

10.3. Instructional Resource Review Committee (IRRC). A committee comprised of West Virginia teachers and other educational specialists.

10.4. Kit-based instructional materials. A pre-packaged set of instructional materials and manipulatives designed to provide students with hands-on activities.

10.5. Open Educational Resource (OER). Freely accessible, openly licensed text, media, and other digital assets that are useful for teaching, learning, and assessing as well as for research purposes.

10.6. Publisher. A person or company that prepares and issues books, journals, music, or other works for sale, in digital and/or print format.

10.7. Resource Review Results. The results of the review of instructional resources conducted by the Instructional Resource Review Committee.

10.8. Vendor. A person or company offering something for sale who is registered on the *West Virginia List of Registered Vendors of Instructional Resources*.

10.9. Vendor Registration. An online system where interested vendors or counties can register a

product to be utilized as a primary instructional resource.

10.10. Web Content Accessibility Guidelines (WCAG). Available through the W3C.

10.11. *West Virginia List of Registered Vendors of Instructional Resources*. The official list of publishers and/or vendors who have registered to provide instructional resources to be used as the primary source in West Virginia public schools.

10.12. World Wide Web Consortium (W3C). Develops international standards for the Web.

§126-35-11. Severability.

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