



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: 126-008

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

RULE NAME: Drug-Free Workplace (1461)

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:

May 17, 2021

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

Yes

Michele L Blatt -- 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.

126CSR8

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 8
DRUG-FREE WORKPLACE (1461)**

§126-8-1. General.

1.1. Scope. -- This rule applies to all employees of the West Virginia Board of Education (WVBE), West Virginia Department of Education (WVDE), county boards of education, and public charter schools in the State of West Virginia.

1.2. Authority. -- W. Va. Constitution, Article XII, §2, W. Va. Code §18-2-5, and the Drug-Free Workplace Act of 1988 (41 U.S.C. 81).

1.3. Filing Date. -- April 15, 2021.

1.4. Effective Date. -- May 17, 2021.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR8, Policy 1461, Drug-Free Workplace, filed December 22, 1992, and effective February 1, 1993.

§126-8-2. Purpose.

2.1. To provide for a drug-free workplace for all persons in the public schools of West Virginia that are safe, healthful, productive, and secure.

2.2. To provide a template for county boards of education and public charter schools to use in developing local drug-free workplace policies.

§126-8-3. Definitions.

3.1. Alcohol. Alcoholic beverages and any other intoxicating liquid which contains alcohol.

3.2. Contractor. Department, division, unit, or any person responsible for the performance of work under a contract.

3.3. Controlled Substance. Federally regulated substance listed in the Control Substances Act, (21 U.S.C. 812) and W. Va. Code §60A-2-201 et seq., which, when taken into the body, may impair one's mental faculties and/or physical performance.

3.4. Conviction. Finding of guilty, including a plea of nolo contendere, or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

3.5. Criminal Drug Statute. Criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.

3.6. Drug-Free Workplace. Worksite where work is performed in connection with the employee's employment. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.

3.7. Employee. Person who works full-time, part-time, or under contract, including management or temporary staff.

3.8. Federal Agency. Agency as defined in 18 U.S.C. 6.

3.9. Grantee. Department, division, unit, or any person responsible for the performance of work under the provisions of a grant.

3.10. Illegal Drug. Drug which is not legally obtainable or a drug that and is being used in a manner or for a purpose other than as prescribed.

3.11. Legal Drug. Prescribed drugs and over-the-counter drugs which have been legally obtained and are being used solely for the purpose for which they were manufactured and as prescribed by a physician.

§126-8-4. Content.

4.1. This policy ensures that workplaces are free of illegal drugs and controlled substances by prohibiting the unlawful manufacture, distribution, dispensation, possession, or use without medical authorization, of illegal or controlled substances and/or alcohol; the reporting to work under the influence of a non-medically prescribed controlled substance or alcohol; or possession of non-medically prescribed paraphernalia.

4.2. This policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled workdays, meal breaks, and/or occasions having an official connection with the job or the agency.

4.3. Possession and/or distribution of a controlled substance will be dealt with promptly in accordance with legal requirements and administrative disciplinary procedures.

4.3.a. Employees who are in violation of the provisions of the Drug-Free Workplace Act shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program. Resources shall be provided in accordance with West Virginia Public Employees Insurance Agency guidelines.

4.3.b. The WVDE will take appropriate personnel action in accordance with the disciplinary procedure outlined in the WVDE Employee Handbook.

4.3.c. State or county agencies that are contractors or grantees are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace, if they make a false initial certification, or if the number of drug-related convictions of employees indicates that the employer has not made a good faith effort to maintain a drug-free workplace.

4.4. As a condition of employment with the WVDE, employees shall:

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4.4.a. comply with the terms of this policy;

4.4.b. notify their supervisor of any criminal drug or alcohol violation occurring in the workplace or conviction outside of the workplace, no later than five days after such violation or conviction occurs; and

4.4.c. sign the Drug-Free Workplace Verification Statement.

4.5. Resources shall be made available to employees by the WVDE Office of Human Resources, according to the guidelines of the West Virginia Public Employees Insurance Agency.

§126-8-5. County Board of Education and Public Charter School Responsibility.

5.1. County boards of education and public charter schools shall develop a policy containing the standards consistent with this policy and shall require every employee to sign a copy of a Drug-Free Workplace Verification Statement which states that the employee is aware of the policy and shall comply with the terms of the policy.

§126-8-6. Severability.

6.1. 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.

West Virginia Department of Education

DRUG-FREE WORKPLACE VERIFICATION STATEMENT

NAME: _____

EMPLOYEE IDENTIFICATION NUMBER: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

Date Employed by West Virginia Department of Education: _____

I, _____, certify that I have received a copy of West Virginia Board of Education Policy 1461, Drug-Free Workplace.

As an employee of the West Virginia Department of Education, I agree to comply with Policy 1461 which states that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance and/or alcohol is prohibited in the workplace. Additionally, I shall not report for work while under the influence of alcohol and/or an illegal drug.

The workplace shall be defined as a worksite where work is performed in connection with the employee's West Virginia Department of Education employment. The workplace shall include but not be limited to facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.

The policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled workdays, meal breaks, and/or occasions having an official connection with the job or the agency.

In addition, I understand that, as a condition of employment, I shall notify my supervisor of any criminal drug or alcohol violation occurring in the workplace or conviction outside of the workplace, no later than five days after such violation or conviction occurs.

Employee Signature

Date