



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-174

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

RULE NAME: Investigating Indoor Air Quality Complaints (6202)

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)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/16/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Micah Whitlow, Manager

ADDRESS: WVDE School Facilities Services
1900 Kanawha Blvd., E, Capitol Bldg. 6, Room 318, Charleston, WV 25305

EMAIL: micah.whitlow@k12.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 6202 sets forth the procedure for the investigation and response to indoor air quality (IAQ) complaints in existing and subsequently constructed schools.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The proposed repeal and replacement of Policy 6202 WILL clarify the overall Indoor Air Quality (IAQ) complaint and resolution process, shortens the overall complaint response times, and includes the county designated official as a required point of contact in the processing of an IAQ complaint. Other technical corrections were also made throughout the policy.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of 126CSR174, Policy 6202.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of 126CSR174, Policy 6202.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of 126CSR174, Policy 6202.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of 126CSR174, Policy 6202.

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.

Policy 6202, Investigating Indoor Air Quality Complaints
Executive Summary

West Virginia Department of Education
Office of School Operations and Finance / School Facilities Services

Policy Cycle: 30 Day Comment Period Adoption of Policy

Policy Process: Revision Repeal and Replace New

Introduction: The proposed repealing and replacement of Policy 6202 clarifies the overall Indoor Air Quality (IAQ) complaint and resolution process, shortens the overall complaint response times, and includes the county designated official as a required point of contact in the processing of an IAQ complaint. Other technical corrections were also made throughout the policy.

Background: This policy details the required process that counties must follow to investigate and resolve an IAQ complaint in a school. It specifies who the complaint will be filed with, the options that official has to resolve the complaint, who can be included on the IAQ committee, the options complainants have in their response, and how the plan of correction will be included in the county's Comprehensive Educational Facilities Plan (CEFP). This policy was last revised on November 12, 1999.

A virtual stakeholder meeting was held on April 23, 2021, where these revisions were summarized and explained to the group. A draft copy was subsequently provided, and the stakeholders were encouraged to offer questions, comments, and suggestions regarding the policy. The stakeholders involved in the revision of Policy 6202 included county superintendents, county facility directors, school principals, staff members from the School Building Authority, and staff members from the West Virginia Department of Education. Suggestions were made by the stakeholders and these were included in the policy. The proposed policy revisions were approved by the stakeholders.

Proposed Changes:

- Section 2.1 states the county shall designate an official responsible for addressing IAQ complaints.
- Section 2.2 states that the complainant is responsible for completing the IAQ complaint form and that the county's designated IAQ official is required to receive the complaint form, in addition to the school principal.
- Section 2.3. makes it clear that the principal and county designated official have the option of initially responding to the complaint or convening the IAQ Committee.
- Section 2.4. states that the county's response is to be provided to the complainant in writing and that there will be a time allowance for material testing.
- Section 2.5. states that county boards are encouraged to seek assistance from local, state, and federal agencies in the process of resolving an IAQ complaint.
- Section 2.6. makes it clear that the complainant may require the forming of the IAQ committee, if the response from the principal and county designated official was not satisfactory.
- Section 2.7. states the process the IAQ committee follows to respond to a complaint. The IAQ response form shall be used in this reply.
- Section 2.8. states that the county will derive the required log number and revises the reporting process to agree with the School Building Authority's polices regarding IAQ complaint reporting. Additionally, this section updates the terminology regarding any necessary updates to a county board's CEFP.

Policy 6202, Investigating Indoor Air Quality Complaints
Executive Summary

- Multiple sections were revised to reduce the maximum response times, and other technical corrections were made throughout the policy.

Impact: The proposed changes clarify the process the complainant follows in order to file an IAQ complaint. The principal now shares the complaint receiving and management responsibilities with the county designated official. Additionally, the changes detail the complaint resolution process for counties and seeks to minimize the potential future growth of hazards through a reduction in maximum response times. With these changes, the policy will better serve the complainant and county boards of education in the process of resolving an IAQ complaint.

Action:

- Release for 30 day public comment.
- Approve by WVBE with effective date of ____/____/20__.

Policy 6202, Investigating Indoor Air Quality Complaints
List of Stakeholders

West Virginia Department of Education

External Stakeholders

- Randall Farley, Superintendent, Marion County
- Todd Alexander, Superintendent, Wayne County
- Deborah Akers, Superintendent, Mercer County
- Dwayne C. Smith, Facilities Director, Kanawha County
- Martin Best, Facilities Director, Wood County
- Rosemarie Kelly, Principal Ridgeview Elementary, Raleigh County
- Trent Sherman, Principal Martinsburg High School, Berkeley County
- Benjamin Ashley, Director of Architectural Services, School Building Authority
- David Roach, Executive Director, School Building Authority

Internal Stakeholders

- Amy Willard, Officer, Office of School Operations & Finance
- Micah Whitlow, Manager, Office of School Operations & Finance, School Facilities
- Emmitt Allen, HVAC Technician, Office of School Operations & Finance, School Facilities
- Ken Hughart, HVAC Technician, Office of School Operations & Finance, School Facilities
- James Richmond, HVAC Technician, Office of School Operations & Finance, School Facilities
- Jerry Milliken, Coordinator, Office of School Operations & Finance, School Facilities
- Heather Hutchens, General Counsel, Legal Services

126CSR174

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 174
INVESTIGATING INDOOR AIR QUALITY COMPLAINTS (6202)

§126-174-1. General.

1.1. Scope. -- This legislative rule sets forth the procedure for the investigation and response to indoor air quality (IAQ) complaints in existing and subsequently constructed schools.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §18-2-5 and §18-9E-3.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. §126CSR174, Policy 6202, Investigating Indoor Air Quality Complaints, filed October 13, 1999, and effective November 12, 1999.

§126-174-2. Investigation of IAQ Complaints.

2.1. Each county shall designate an official who shall be responsible for addressing IAQ complaints.

2.2. Individuals wishing to file an IAQ complaint shall complete an IAQ Complaint Form found on the West Virginia Department of Education's (WVDE) website. The form must be filed with the principal of the affected school and the county's designated official.

2.2.a. The complainant may check on the status of the complaint at any time throughout the investigation.

2.3. Upon receipt of an IAQ Complaint Form the school principal and the county's designated official shall:

2.3.a. investigate the complaint within one working day of the initial filing and respond to the complainant within five working days of the initial filing through completion of the IAQ Investigation and Response Form found on the WVDE's website; or

2.3.b. investigate the complaint within one working day of the initial filing and, dependent upon the severity of the finding(s), immediately convene the school's IAQ Investigation Advisory Committee (IAQ Committee) and notify the complainant in writing that an IAQ Committee has been convened to investigate the complaint.

2.4. If the complainant is not satisfied with the principal or designated official's response under section 2.3.a, the complainant may, within five working days, ask the principal or designated official to follow section 2.3.b, requiring the complaint to be reviewed by the IAQ Committee.

2.5. IAQ Committee members shall consist of seven members, with no more than two members being of the same roles identified below:

- 2.5.a. principal of the school named in the complaint,
- 2.5.b. county superintendent or designee,
- 2.5.c. county facilities/maintenance director (may serve as the county superintendent's designee),
- 2.5.d. member(s) of faculty senate of the school named in the complaint,
- 2.5.e. school custodian(s) of the school named in the complaint, and
- 2.5.f. member(s) of the local school improvement council of the school named in the complaint.

2.6. Once convened, the IAQ Committee has five working days to review and respond to the complainant by way of the principal or designated official as to the status and corrective action plan through completion of the IAQ Investigation and Response Form found on the WVDE's website.

2.6.a. The response may be marked preliminary in situations where the IAQ Committee is waiting to base its corrective action plan on sample results from a testing company. During this waiting period of not more than five additional working days, the principal and designated official shall ensure the safety of all building occupants. Upon receipt of the requisite test results, the IAQ Committee shall prepare and issue a written follow-up communication to the complainant that either confirms or adjusts the preliminary response or provides the county's revised corrective action plan.

2.7. Counties that receive IAQ complaints are encouraged to seek assistance from local, state, and federal agencies in both investigating the complaint and in forming the corrective action plan. Upon request, WVDE heating, ventilation, and air conditioning technicians are available to provide technical assistance in resolving IAQ complaints. It is recommended that technical assistance in resolving an IAQ complaint be requested as soon as possible upon receipt of an IAQ complaint.

2.8. The appeal process is completed upon issuance of the IAQ Committee's final response.

§126-174-3. Reporting of IAQ Complaints.

3.1. The county shall:

3.1.a. assign a county derived log number for each complaint filed with the principal and designated official;

3.1.b. provide a corrective action plan and estimated cost for each valid complaint;

3.1.c. send to the WVDE School Facilities Services unit a report on the number of IAQ complaints and the total estimated cost of correction for all IAQ complaints registered during each quarter;

3.1.c.1. the report on the number of IAQ complaints is due within 15 calendar days of the end of

each quarter; and

3.1.d. review all corrective action plans against the county's ten-year CEEP and make any necessary amendment(s) to the CEEP.

§126-174-4. Severability.

4.1. 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.

**W. Va. 126CSR174, Policy 6202, Investigating Indoor Air Quality Complaints
Comment Response Form**

Comment Period Ends: August 16, 2021

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 6202, Investigating Indoor Air Quality Complaints**. 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"/> Superintendent | <input type="checkbox"/> Higher Educator | <input type="checkbox"/> Parent/Family |
| <input type="checkbox"/> Principal | <input type="checkbox"/> Teacher | <input type="checkbox"/> Community Member |
| <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Other |

COMMENTS/SUGGESTIONS
§126-174-1. General.
§126-174-2. Investigation of IAQ Complaints.
§126-174-3. Reporting of IAQ Complaints.
§126-174-4. Severability.

Please direct all comments to:

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