

WEST VIRGINIA  
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #5

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2002 JAN 10 P 2:04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W. Va. Constitution, Article XII, § 2, W.Va. Code §§ 18-2-5, 6-9A-1, et seq., and 29B-1-1, et seq.

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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).

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

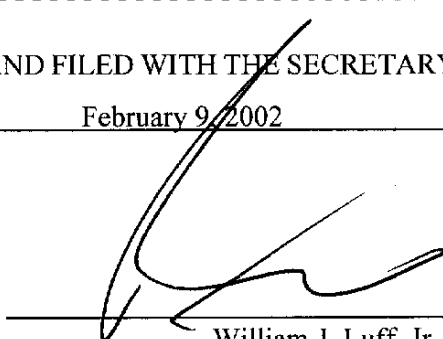
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Notice and Conduct of Meetings (1241)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS February 9, 2002.

  
\_\_\_\_\_  
William J. Luff, Jr.  
Deputy State Superintendent of Schools

**EXECUTIVE SUMMARY  
WEST VIRGINIA DEPARTMENT OF EDUCATION**

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**POLICY NUMBER AND TITLE:** Policy 1241  
Notice and Conduct of Meetings

**PUBLIC COMMENT PERIOD ENDS:** December 11, 2001 **ADOPTED:**  
January 9, 2002

**BACKGROUND:**

This policy has not been revised since 1995. The current practice of the West Virginia Board of Education is to begin meetings at 8:30 a.m. instead of 9:00 a.m.

**PURPOSE:**

This procedural rule modifies the format to the required format, adds a West Virginia Code citation, and allows flexibility for the starting time of meetings.

No comments were received and no other changes were made.

**TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION  
SERIES 3  
NOTICE AND CONDUCT OF MEETINGS (1241)**

**FILED**

2002 JAN 10 P 2:04

OFFICE WEST VIRGINIA  
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**§126-3-1. General.**

1.1. Scope - This procedural rule establishes requirements for notice of general and special meetings and general rules for conduct of said meetings.

1.2. Authority - W.Va. Constitution, Article XII, Section 2, W.Va. Code § §18-2-5, 6-9A-1, et seq. and 29B-1-1, et seq.

1.3. Filing Date - January 10, 2002

1.4. Effective Date - February 9, 2002

1.5. Repeal of former rule. This procedural rule modifies WV 126CSR3 "Notice and Conduct of Meetings" filed and effective January 6, 1996.

**§126-3-2. Preface.**

2.1. The Constitution of West Virginia provides in Article II, Section 2, that: "the powers of government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment;"

2.2. This constitutional mandate is reiterated in various forms in Sections 1, 2, 3, 10, 16 and 20 of Article III of the Constitution of West Virginia;

2.3. The West Virginia Legislature has provided in Article 9A of Chapter 6 that all regular and special meetings of governing bodies shall be open to the people of the State and that the people shall be given reasonable advance notice of the time, date and location of their being convened: Provided, however, that governing bodies may hold executive sessions as part of duly convened regular, special or emergency meetings under certain circumstances as permitted by law;

2.4. The Legislature has provided in Section 3, Article 9A, Chapter 6, of the West Virginia Code that:

Each governing body shall promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available,

in advance, to the public and news media, except in the event of an emergency requiring immediate official attention; and,

2.5. The Legislature, in Section 1, Article 1, Chapter 29B, of the West Virginia Code has:

. . . declared [it] to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees; and,

2.6. The West Virginia Board of Education, in pursuance of Article XII of the Constitution of West Virginia, recognizes that it has a responsibility to see that the people of the State are thoroughly, efficiently and freely educated, and that this responsibility takes many forms.

### **§126-3-3. Notice of Meetings.**

3.1. The West Virginia Board of Education shall meet at the State Capitol or at some other place convenient to the people of the State.

3.2. Regular meetings shall be held on the second Thursday of each month, convening at a morning hour as established and noticed by the West Virginia Board of Education, in Room No. B-353, Building No. 6, State Capitol: Provided, however, that the State Board may, upon due notice to the public, change the time, date and location of its regular meetings. Work sessions shall be held on the Wednesday afternoon preceding the regular Board meeting, if necessary, following proper notice to the public regarding the time, date and location of the same.

3.3. Special meetings may be held at such other times as may be necessary, such meetings to be held upon the State Board's own resolution or at the call of its President.

3.4. Notice of all regular, special and emergency meetings shall be given through the regular public information services—including newspapers of the State, wire services, radio and television—at least one week in advance of all regular meetings, and a reasonable time in advance of all special meetings.

3.5. The notice given of any meeting shall include the time, date and place it is to be convened; the notice given of any special meeting shall also include a statement of its purpose. The notice of an emergency meeting shall also include a statement of its purpose and the facts and circumstances of the emergency.

3.6. The public will be provided accurate and proper copies of the agenda of any meeting on the day it is held and before it has been convened.

3.7. The minutes of the West Virginia Board of Education will be open to inspection by any member of the public, as provided by West Virginia Code §29B-1-1, et seq, and West Virginia Code §6-9A-5.

**§126-3- 4. Conduct of Meetings.**

4.1. All meetings must be open to the public, although the State Board may, either on its own initiative or upon the request of an interested party, hold an executive session during a regular, special or emergency meeting after its presiding officer has identified the authorization under Article 9A of Chapter 6 for the holding of such executive session and has presented it to the governing body and to the general public, as required by Section 4, Article 9A, Chapter 6, of the West Virginia Code. The State Board may also hold an executive session to discuss any matter protected or covered by the attorney-client privilege.

4.2. Persons desiring to address the State Board of Education are encouraged to make arrangements in advance with the State Superintendent or the President of the Board. However, advance arrangements are not necessary as such person may sign in prior to the scheduled commencement of any regular or special meeting. Any speaker shall provide his/her name, mailing address, telephone number(s) and the subject to be addressed. Presentations shall be limited to five minutes, unless otherwise designated by the State Board. Delegations are encouraged to use a spokesperson to present their concerns or proposals. However, the Board may choose to schedule the presentation of a delegation to coincide with a topic on the agenda, and may limit the total period of time to be devoted to comment on a particular issue or agenda item.

4.3. Although inquiry, consultation and discussion may be had in an executive session, no decisions (as defined in Section 2, Article 9A, Chapter 6, of the West Virginia Code) may be made in an executive session.

**§126-3- 5. Meeting by Conference Call.**

5.1. The residences of the West Virginia Board of Education members are widely dispersed throughout the state, in some instances, more than two hundred fifty miles from Charleston, and some of said members have full-time professions, businesses or occupations.

5.2. Occasions may arise when special or emergency meetings must be held during the interval between regular monthly meetings, on short notice and at times when it is not possible for a majority of members to be present in Charleston or other designated meeting site. On such occasions, members may attend and participate in the meeting by telephone or video teleconference to the same extent as if physically present. A speakerphone or other audio/video device shall be used at the meeting site to enable those present, including the public, to hear/see the members who are attending and participating by telephone or video teleconference.

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 1241: Notice and Conduct of Meetings FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

**SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT**

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT 97-98	THEREAFTER
1. ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

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

DATE

AGENCY

AUTHORIZED REPRESENTATIVE

October 1, 2001

West Virginia Department of Education

