

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #5

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DEC 7 3 26 PM '95

OFFICE OF 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. Const., Article XII, §2 and W.Va. Code 18-2-5

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES XX, 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 ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 6, 1996.

Victor A. Barone
Victor A. Barone
Director, Legal Services

EXECUTIVE SUMMARY

POLICY 1241: NOTICE AND CONDUCT OF MEETINGS

Background

Policy 1241 sets forth the parameters for meetings of the West Virginia Board of Education. It was last amended in 1978.

West Virginia Code Section 18-2-3 provides that the West Virginia Board of Education shall hold at least six meetings in every year at such times and places as it may prescribe. Policy 1241 currently provides that the Board shall meet monthly on the second Thursday and Friday of each month in the Board conference room. It further provides that the Board may, upon due notice to the public, change the date, time and location of its regular meetings.

Purpose

Three changes to Policy 1241 are proposed. The first would establish monthly one day meetings on the second Thursday of each month. The second would change the time limit for presentations to the Board from seven or eight minutes to five minutes unless otherwise designated by the Board. The third makes provisions for meeting by telephone.

Content

The changes are consistent with the Board's recent practice. One day meetings appear to provide time for the State Board to conduct its business. Should a two day meeting be necessary, Policy 1241 provides that the Board can so designate a meeting. The five minute time limit applies only to presentations, and it does not preclude the Board from allowing speakers additional time or from asking questions and seeking further information from presenters.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

126CSR3

TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION

SERIES 3
NOTICE AND CONDUCT OF MEETINGS (1241)

§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 and W.Va. Code 6-9A-1, et seq.

1.3. Filing Date - December 7, 1995

1.4. Effective Date - January 6, 1996

§126-3-2. Preface.

2.1. Whereas, 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. Whereas, 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. Whereas, 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. Whereas, 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. Whereas, 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. Whereas, 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.

Now, therefore, be it resolved that:

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 9:00 a.m. , 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.

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 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.

Be it further resolved, that the West Virginia Board of Education recognizes that:

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.

4.4. This policy statement amends the policy statement filed by the Board of Education in the Secretary of State's office on the 3rd day of June, 1991. Until this statement becomes effective in accordance with the provision of Section 2, Article 1, Chapter 29A, of the West Virginia Code, the original policy statement promulgated by the State Board of Education shall remain in full force and effect.

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

Be it further resolved, the West Virginia Board of Education recognizes that:

5.1. (1) The residences of its citizen members are widely dispersed throughout the state, in some instances, more than two hundred fifty miles from Charleston, and (2) many 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.

5.3. 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 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) _____

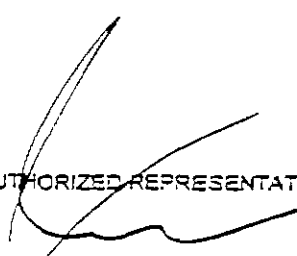
SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES	\$	\$	\$	\$	\$
CURRENT EXPENSES	-0-	-0-	-0-	-0-	-0-
REPAIRS/ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):					

TE

3/30/95

AGENCY
Department of Education


 AUTHORIZED REPRESENTATIVE
 Associate State Superintendent

COMMENTS AND SUGGESTIONS LOG
POLICY 1241: NOTICE AND CONDUCT OF MEETINGS
 October 13 - November 22, 1995

ACTION TYPE
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted o Neutral

DATE	INDIVIDUAL/ORGANIZATION	COMMENTS/SUGGESTIONS	ACTION	TYPE	RATIONALE
<u>GENERAL COMMENTS</u>					
11/2/95	Judy Gibson Mingo County Voc-Tech Rt. 2, Box 52-A Delbarton, WV 25670	We are in agreement with the changes in this policy.	A	+	
11/20/95	Berkeley Heights Faculty Sen. Rt. 5, Box 490 Martinsburg, WV 25401	We feel that this bill would probably save money, but would not allow time required to make correct decisions on statewide issues. The second change is a direct attempt to limit input.	NA	-	Board always provides adequate time for consideration of issues.

SECTION 126-3-1

SECTION 126-3-2

SECTION 126-3-3

10/30/95	H. Lawrence Jones Superintendent Ohio County Schools 2203 National Road Wheeling, WV 26003-5299	This provision is also more responsive to local school personnel whose time is valuable. Presenting one day and then waiting until the next for action is very inconvenient.	A	+	
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DATE	INDIVIDUAL/ORGANIZATION	COMMENTS/SUGGESTIONS	ACTION/TYPE	RATIONALE
11/6/95	Delegate Roy E. Givens Building 1, Room E-210 1900 Kanawha Blvd., East Charleston, WV 25305	As I understand the change in the policy, the State Board will meet on the second Thursday of each month only and the meeting will start at 9:00 a.m. As you know, if anyone from either the northern panhandle or the eastern panhandle wants to participate in this meeting, it would be very difficult to make a 9:00 meeting without either leaving home at a very early hour or being required to stay overnight in Charleston. It would be my desire to have the meeting at 1:00 p.m. which would make it easier for the above mentioned people to make a meeting at this hour without any undue hardship. I believe it is the Board's responsibility to encourage people to participate in their meetings and to make it as less difficult as possible.	NA	Board schedules delegations at times convenient for them.
11/8/95	Paul Cool Member, Webster Co. Bd. 3 Guardian Drive Diana, WV 26217	Meetings would be more convenient to the people if meetings were held in all 55 counties.	NA	Board meets in various locations throughout the state.
11/20/95	Berkeley Heights Faculty Sen. Rt. 5, Box 490 Martinsburg, WV 25401	This is not enough time to make decisions of statewide importance! What constitutes an emergency?	NA	

DATE	INDIVIDUAL/ORGANIZATION	COMMENTS/SUGGESTIONS	ACTION/TYPE	RATIONALE
11/9/95	Cross Lanes Elem. Fac. Sen. 5525 Big Tyler Road Cross Lanes, WV 25313	Should be 7 or 8 minutes. Five minutes is not long enough.	NA	Board can always allow additional time if needed.
11/20/95	Berkeley Heights Faculty Sen. Rt. 5, Box 490 Martinsburg, WV 25401	Five minutes is not enough time to obtain adequate input and opinions from those wishing to speak. This, we believe, is a direct attempt to limit input from concerned citizens and groups.	NA	Board can always allow additional time if needed.

SECTION 126-3-5

10/30/95	H. Lawrence Jones Superintendent Ohio County Schools 2203 National Road Wheeling, WV 26003-5299	This provision is in keeping with the high technology environment we live in. I would suggest the uplink capability with interactive television would be an additional resource available and could be included with the "telephonic provision."	A +	
10/31/95	G.Carskadon Rt. 1, Box 94 Burlington, WV 26710	It may be more advisable for the State Board of Education to meet in a central location to the State as a whole (i.e., a central county). Telephone costs may be excessive if the meeting is lengthy. Some telephone systems in the State are <u>not</u> predictable.	NA	Board meets in various locations throughout the state.
11/20/95	Berkeley Heights Faculty Sen. Rt. 5, Box 490 Martinsburg, WV 25401	What constitutes an emergency? What is a majority? The dynamics of personally being present is missing here. The impact of personal presence is missing.	NA	

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

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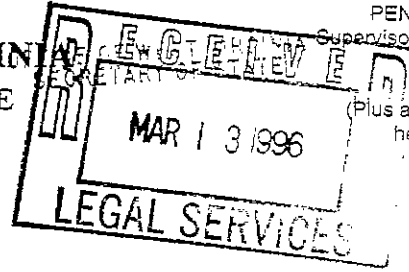
WILLIAM H. HARRINGTON
Chief of Staff

MAR 20 9 50 AM '96

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770



(Plus all the volunteer help we can get)

TO: Vic Barone

AGENCY: Education

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 11, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 3 TITLE: 126 Education

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Vicki A Barone

TITLE OF PERSON SIGNING: Director of Legal Services

DATE: 3/19/96

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.