

WEST VIRGINIA  
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

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2002 JAN 10 P 2:04

WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Const., Article XII, § 2, W. Va. Code §§ 6-9A-4, 18-2-5, 18-3-4, 18A-3-2a, and 18A-3-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Rules of Procedure for Administrative Hearings and Appeals (1340)

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

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON February 9, 2002 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Ms. Rebecca M. Tinder, Esquire

Legal Services

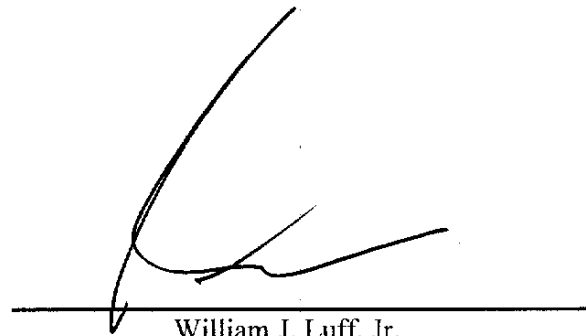
West Virginia Department of Education

Capitol Building 6, Room 362

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305

THE ISSUES TO BE HEARD WILL BE LIMITED TO THIS PROPOSED RULE



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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.80

**POLICY 1340  
RULES OF PROCEDURE FOR  
ADMINISTRATIVE HEARINGS AND APPEALS**

**EXECUTIVE SUMMARY**

**Public Comment Period Ends: February 9, 2002**

**Background:**

Policy 1340 was previously used to refer cases to the Professional Practices Panel for a recommendation to the State Superintendent regarding certification revocations and suspensions. This policy was previously out for comment and set for approval for revisions to make the denial for cause hearing process a parallel process to the revocation/suspension process. Just prior to the West Virginia State Board of Education meeting wherein the policy was to be approved, the West Virginia State Supreme Court issued a ruling indicating that our procedure was legally flawed.

**Purpose:**

Revisions to Policy 1340 are being recommended to centralize the language regarding hearings into one policy making the procedures for revocations, suspensions, and denials for cause identical and in conformance with the recent West Virginia Supreme Court opinion. This would permit the hearings to be conducted by the State Superintendent or his designee, an employee of the West Virginia Department of Education.

126CSR4

TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION

SERIES 4  
RULES OF PROCEDURE FOR ADMINISTRATIVE  
HEARINGS AND APPEALS (1340)

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§126-4-1. General.**

1.1. Scope. - The "Rules of Procedure for Administrative Hearings and Appeals" are promulgated to assure procedural due process and expeditious processing of administrative proceedings before the State Superintendent of Schools. Nothing herein should be interpreted to give rise to an action on the part of any county school personnel; all remedies which are allowable by a county board of education or county school superintendent should be exhausted before appealing to the State Superintendent to hear a controversy.

1.2. Authority. - W.Va. Const., Article XII, §2; W.Va. Code §§6-9A-4, 18-2-5, 18-3-4, 18A-3-2a, and 18A-3-6.

1.3. Filing Date. - ~~January 15, 1999.~~

1.4. Effective Date. - ~~February 15, 1999.~~

**§126-4-2. Foreword.**

2.1. This policy governs the disposition of all administrative proceedings as well as the hearing of appeals and the adjudication of controversies and disputes arising under school laws by the State Superintendent of Schools, including citizens' appeals under State Board Policy 7211.

**§126-4-3. General Rules.**

3.1. Definition of "Superintendent." As used in these rules, unless a different meaning appears from the context, "Superintendent" shall mean the State Superintendent of Schools, or that person employee of West Virginia Department of Education (WVDE) designated by the Superintendent to hear and determine issues.

3.2. Definition of "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher to the extent pertinent.

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3.3. All parties shall receive notice at least ten (10) days prior to the hearing. The notice of hearing shall include:

3.3.1. the date, time and place of the hearing,

3.3.2. a concise statement of the purpose,

3.3.3. mention that either the Superintendent or a designee of the Superintendent shall conduct the hearing.

3.4. A copy of this policy shall be provided to the parties to the hearing.

3.5. Appearance Pro Se. Any person may either appear in person or be represented by a representative or an attorney at law admitted and authorized to practice in this State.

3.6. Authority of Superintendent ~~or his or her designee~~. The Superintendent ~~or his or her designee~~ shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the Superintendent's ~~or his or her designee's~~ opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters.

3.6.1. The Superintendent may also call witnesses and question them. The Superintendent may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.

3.6.2. A hearing may be adjourned from one day to another or to another place either by announcement by the Superintendent at the hearing or by appropriate notice.

3.6.3. The Superintendent ~~or his or her designee~~ may grant a continuance for good cause shown by the requesting party or upon his/her own motion.

3.7. Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the Superintendent ~~or his or her designee~~ desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The Superintendent ~~or his or her designee~~ may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the Superintendent's ~~or his or her designee's~~ knowledge. Parties may be given a fair opportunity to refute the facts so

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noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted or to a determination of appropriate relief.

3.8. Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body whose action is called into question before the Superintendent ~~or his or her designee~~, either party may, if at least ~~thirty (30)~~ ten (10) days' notice of intention to do so has been given to opposing parties or counsel, offer the transcript of testimony of any witness or witnesses named in said notice in lieu of producing said witness or witnesses at the hearing.

3.9. Briefs and Oral Argument. All parties shall have the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the Superintendent ~~or his or her designee~~ shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the Superintendent ~~or his or her designee~~.

3.10. Failure to Cooperate. The Superintendent may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the Superintendent ~~or his or her designee~~, in the course of a proceeding.

3.11. Written Decision. ~~Every determination hereunder, shall be made either by the Superintendent or his or her designee.~~ Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate recommended order, and an opinion containing the reason or reasons for the decision. Such written findings, conclusions, decision and recommended order shall be issued by the Superintendent's ~~or his or her designee~~. Upon receipt of the recommended order with findings and conclusions from such designee, the Superintendent shall review the same along with the record and issue an order adopting the findings, conclusions, and/or recommendations; rejecting the findings, conclusions and/or recommendations; or remanding the matter back to the designee with instructions for further evidence or findings, conclusions and/or recommendations. When the case is heard directly by the Superintendent, the Superintendent shall issue a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order, and an opinion containing the reason or reasons for the decision. Said orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record within thirty (30) days following the hearing superintendent's receipt of any recommendation of his or her designee or within thirty (30) days following the hearing when heard directly by the Superintendent.

3.12. Waiving of Rules. Any of the provisions of these rules relating to the presentation of his/her case or argument may be waived by any party or his/her attorney.

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3.13. Hearings shall be recorded by electronic means or by a court reporter.

### **§126-4-4. Hearings for Certification Suspension/Revocation/Denial for Cause.**

4.1. Definition of "Superintendent Hearing Officer." As used in these rules, unless a different meaning appears from the context, "Superintendent Hearing Officer" shall mean the State Superintendent of Schools, or ~~that person assigned a WVDE employee designated~~ by the Superintendent to hear and determine issues of teaching certificate suspension and/or revocation.

4.2. Definition of "Teacher." As used in these rules, the word "Teacher" (and its derivatives) shall mean any person certified or otherwise professionally licensed by the Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education or pursuant to statute, including but not limited to administrators, professionals, paraprofessionals, coaches, and holders of service certificates.

4.3. Definition of "Applicant." As used in these rules, the word "Applicant" (and its derivatives) shall mean any person applying for a teacher license issued by the Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education or pursuant to statute.

4.3.4. Definition of "Party." "Party" shall mean petitioner, respondent, and/or intervener. "Party" shall also mean teacher to the extent pertinent.

~~4.4. Definition of Professional Practice Panel. "Professional Practice Panel" shall mean the seven (7) individuals selected to hear and make recommendations to the Superintendent regarding revocation for cause of a teacher's license.~~

4.5. Grounds for Revocation of Certificates. The Superintendent may, after ten (10) days' notice and upon proper evidence, revoke or suspend the certificate(s) of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him/her unfit for the proper performance of his or her duties, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit; or for any other cause which would have justified the withholding of a certificate when the same was issued. (West Virginia Code §§18A-3-2a, 18A-3-6)

4.6. Grounds for Denial of Licensure for Cause. A certificate shall not be issued to any person who is not of good moral character and physically, mentally, and emotionally qualified to perform the duties for which the certification would be granted or for any other cause which would justify the revocation or suspension of certification. (West Virginia Code §§18A-3-2a, 18A-3-6)

4.6.7. Duty of County Superintendent. It shall be the duty of any county

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superintendent who knows of any immorality or neglect of duty on the part of any teacher, including student teachers, to report the same, together with all the facts and evidence, to the Superintendent for such action as may be proper. In the case of a student teacher, the county superintendent must also send the report to the appropriate teacher preparation institution. Failure to report such information, if willful, may be grounds for revocation of the certificate of the county superintendent.

4.7-8. Recalling Certificates for Correction. If a certificate has been granted through an error, oversight, or misinformation, the Superintendent shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and State Board of Education policy.

4.8-9. Teaching Certificate Revocation Proceedings; Notice. Teaching certificate revocation proceedings shall be conducted before the ~~Professional Practice Panel~~; Hearing Officer. The teacher shall receive notice ten (10) days prior to the hearing.

4.8-9.1. The notice shall include:

- a. the date, time and place of the hearing,
- b. a concise statement of the charges,
- c. ~~mention that the Chair of the Professional Practice Panel indicate that the Superintendent or his/her designee shall conduct the hearing, and~~
- d. the possible actions to be taken against the certificate of the teacher.

4.8-9.2. Upon timely request by the teacher, a more definite statement of the charges shall be received by the teacher at least ten (10) days prior to the hearing.

4.8-9.3. Appearance Pro Se. Any person may either appear in person with or without a representative or an attorney at law admitted and authorized to practice in this State.

4.10. Denial for Cause Proceedings. Denial for cause proceedings shall be conducted before the Hearing Officer. The applicant may submit a written request for an appeal hearing within thirty (30) days of notification of a recommendation of a denial for cause from the Office of Professional Preparation. If no such hearing request is timely received, the application may be denied for cause by the Superintendent. If an appeal hearing request is received, the applicant shall receive notice ten (10) days prior to the hearing.

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### 4.10.1. The notice shall include:

a. the date, time and place of the hearing,

b. a concise statement of the reasons for the denial recommendation,

and

c. indicate that the Superintendent or his/her designee shall conduct the hearing

4.10.2. Appearance Pro Se. Any person may either appear in person with or without a representative or attorney at law admitted and authorized to practice in this State.

4.911. Hearing on Teaching Certification. A teaching certificate suspension, revocation, or denial for cause hearing is a continuation of the Superintendent's investigation into whether a professional teaching or administrative certificate or lesser license, a paraprofessional certificate or lesser license, a service certificate or lesser license, or a coaching certificate or lesser license should be suspended, revoked or denied for cause.

4.9-11.1. A teaching certificate suspension, revocation or denial for cause hearing shall be open to the public, unless the teacher or applicant requests that it be closed.

4.9-11.2. The purpose of a teaching certificate suspension, revocation or denial for cause hearing is to allow the teacher or applicant due process regarding the asserted causes for revocation, suspension, denial or restriction of the teaching certificate. The teacher or applicant may present his or her position through presentation of evidence, examination and cross-examination of witnesses, and oral argument.

4.9-11.3. The Superintendent Hearing Officer may also call witnesses and question them, as well as those called by the teacher or applicant. The Chair of the Professional Practice Panel or Licensure Appeal Panel Hearing Officer may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.

4.9-11.4. A hearing may be adjourned from one day to another or to another place either by announcement by the Hearing Officer Chair of the Professional Practice Panel or Licensure Appeal Panel at the hearing or by appropriate notice.

4.9-11.5. The Superintendent or his or her designee may grant a continuance for good cause shown by the requesting party or upon his/her own motion.

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~~4.10.12.~~ Authority of ~~Superintendent or his or her designee~~ Hearing Officer. The ~~Superintendent or his or her designee~~ Hearing Officer shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; rule upon offers of proof; issue subpoenas; take or cause depositions to be taken whenever the ends of justice would, in the ~~Superintendent's or his or her designee's~~ Hearing Officer's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters.

~~4.10.12.1.~~ The ~~Superintendent~~ Hearing Officer shall have authority to recommend a teacher certificate be revoked, suspended, denied for cause, or restricted the teaching certificates by the Superintendent.

~~4.11.13.~~ Evidence. The formal rules of evidence shall be relaxed. Evidence will be admissible if it is material and relevant to the matter before the ~~Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents which the ~~Superintendent or Chair of the Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer desires to consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding. The ~~Superintendent or Chair of the Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer may take official notice of any fact which may be judicially noticed by a Court and, in addition, may take official notice of general, technical or scientific facts within the ~~Superintendent's or Chair of the Professional Practice Panel's or Chair of the Licensure Appeal Panel's~~ Hearing Officer's knowledge. Parties may be given a fair opportunity to refute the facts so noticed. The requirements of this rule shall not apply to cases in which the truth of the particular fact or matter is admitted, or to a determination of appropriate relief. Revocation, suspension, or other action against the certificate of a teacher in another jurisdiction or refusal by another jurisdiction to issue a teacher certificate shall be *prima facie* evidence of grounds for revocation, suspension, denial for cause or other action against the certificate in West Virginia. The teacher or applicant may appear and show cause why his/her certificate in West Virginia should not be revoked or should be issued. This hearing shall be upon notice and hearing as provided elsewhere in these rules.

~~4.12.14.~~ Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any court of record or other official or body concerning issues which form or support the basis for ~~a the hearing,~~ before the ~~Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer, either party may provide to the ~~Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer and the other party copies of said transcripts to be used as substantive evidence in the ~~Panel's~~ proceedings. The transcript of testimony of any witness or witnesses may be used in lieu of producing said witness or witnesses at the hearing. The use of transcripts may also be directed by the ~~Chair of the Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer in the interest of time.

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4.4315. Briefs and Oral Argument. All parties shall have the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to thirty (30) minutes for each party, unless the ~~Chair of the Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the ~~Chair~~ Hearing Officer.

4.4416. Failure to Participate. Upon failure of a teacher or applicant to contest the asserted causes for revocation of a certificate or lesser license or for the denial for cause of a certificate or lesser license, or upon failure of a party respondent to appear and defend against the petitioner's claims, all of the allegations/claims duly made may be accepted by the ~~Superintendent and Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer as confessed.

4.4517. Failure to Cooperate. The ~~Superintendent~~ Hearing Officer may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the ~~members of the Professional Practice Panel or Licensure Appeal Panel~~ Hearing Officer, in the course of a proceeding.

4.4618. Written Decision. Every decision of the ~~Professional Practice Panel and Licensure Appeal Panel~~ Hearing Officer shall be embodied in a written recommendation which shall set forth the findings of fact and conclusions of law and an opinion containing the reason or reasons for the decision. Such written findings, conclusions, and recommended decision shall be issued by the ~~Chair of the Professional Practice Panel or Chair of the Licensure Appeal Panel~~ by the Hearing Officer to the Superintendent. An appropriate Order setting forth a decision regarding revocation of certification, denial for cause or other action shall be issued by the Superintendent which shall either adopt the recommendation of the Hearing Officer or contain a factual or legal basis for varying from the recommendation of the Hearing Officer. When the case is heard directly by the Superintendent, the Superintendent shall issue a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order, and an opinion containing the reason or reasons for the decision. Said orders shall be filed in the office of the Superintendent and copies thereof shall be served or mailed to the parties of record affected thereby or their attorneys of record within thirty (30) days following the receipt of the recommendations by the Superintendent or within thirty (30) days of the hearing if the same was conducted by the Superintendent.

4.4719. Waiving of Rules. Any of the provisions of these rules relating to the presentation of his/her case or argument may be waived by any party or his/her attorney.

4.4820. Hearings shall be recorded by electronic means or by a court reporter.

### **§126-4-5. Other Hearings.**

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5.1. Hearing on Removal of a School Official. Hearings conducted for removal of a county school official shall be conducted following the general rules in §126-4-3 of this policy.

### **§126-4-6. Appeal to Circuit Court.**

6.1. Any party not satisfied with the decision rendered by the Superintendent or his or her designee may appeal the same to the Circuit Court within 30 days of mailing of the order to the last known address of the party.

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

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

SUBJECT Policy 1340: Rules of Procedure for Administrative Hearings and Appeals 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 -

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

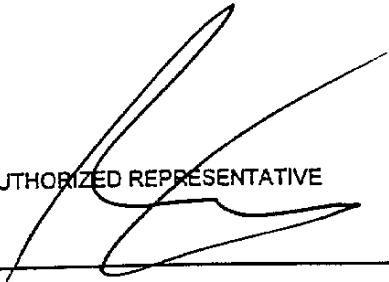
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

August 31, 2001

West Virginia Department of Education



**POLICY 1340: RULES OF PROCEDURE FOR  
ADMINISTRATIVE HEARINGS NAD APPEALS**

**COMMENT PERIOD ENDS: February 9, 2002**

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*Directions: Please use this form to provide comments/suggestions regarding revised Policy 1340.*

Individual/Organization: \_\_\_\_\_

Title: \_\_\_\_\_ Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

<b>COMMENTS/SUGGESTIONS</b>
<b>§126-4-1. General.</b>
<b>§126-4-2. Foreword.</b>
<b>§126-4-3. General Rules.</b>

**§126-4-4. Hearings for Certification Suspension/Revocation/Denial for Cause.**

**§126-4-5. Other Hearings.**

**§126-4-6. Appeal to Circuit Court.**

Please Mail the Completed Comment Form to:

Rebecca M. Tinder, Esquire

Legal Services

West Virginia Department of Education

Capitol Building 6, Room 362

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305-0330

E-Mail Address: [rtinder@access.k12.wv.us](mailto:rtinder@access.k12.wv.us)

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