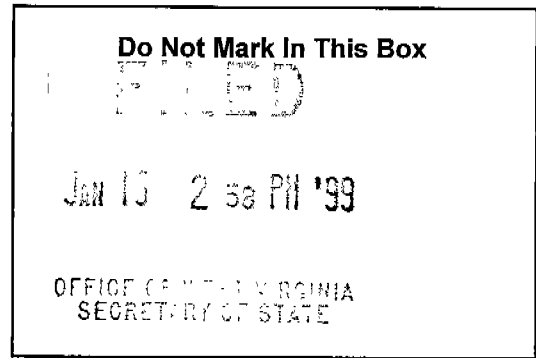


WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5



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; W.Va. Code §§18-2-5, 18-3-4 and 18A-3-6.

RULE TYPE: PROCEDURAL X 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: 4

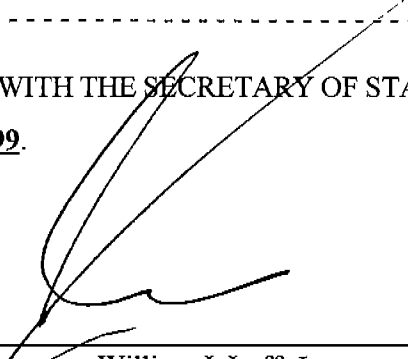
TITLE OF RULE BEING AMENDED: Rules of Procedure for Administrative Hearings and

Appeals (1340)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS February 15, 1999.


William J. Luff, Jr.
Associate State Superintendent

\$440

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FILED

JAN 15 2 58 PM '99

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

OFFICE OF THE CLERK OF COURTS
SECRETARY OF STATE

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

§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 §§18-2-5, 18-3-4 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 designated by the Superintendent to hear and determine issues.

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

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

126CSR4

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. 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 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

126CSR4

action is called into question before the Superintendent or his or her designee, either party may, if at least thirty (30) 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 order, and an opinion containing the reason or reasons for the decision. Such written findings, conclusions, decision and order shall be issued by the Superintendent or his or her designee. 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.

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.

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

§126-4-4. Hearings for Certification Suspension/Revocation.

4.1. 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 assigned by the Superintendent to hear and determine issues of teaching certificate 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, paraprofessionals, coaches, and holders of service certificates.

4.3. Definition of "Party." "Party" shall mean petitioner, respondent, intervener. "Party" shall also mean teacher to the extent pertinent.

126CSR4

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 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.

4.6. Duty of County Superintendent. It shall be the duty of any county 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. 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. Teaching Certificate Revocation Proceedings; Notice. Teaching certificate revocation proceedings shall be conducted before the Professional Practice Panel; the teacher shall receive notice ten (10) days prior to the hearing.

4.8.1. 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 shall conduct the hearing,
- and
- d. the possible actions to be taken against the certificate of the teacher.

4.8.2. 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.

126CSR4

4.8.3. 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.

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

4.9.1. A teaching certificate revocation hearing shall be open to the public, unless the teacher requests that it be closed.

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

4.9.3. The Superintendent may also call witnesses and question them, as well as those called by the teacher. The Chair of the Professional Practice Panel may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument.

4.9.4. A hearing may be adjourned from one day to another or to another place either by announcement by the Chair of the Professional Practice Panel at the hearing or by appropriate notice.

4.9.5. 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.

4.10. 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.

4.10.1. The Superintendent shall have authority to revoke, suspend, or restrict the teaching certificate.

4.11. Evidence. Evidence will be admissible if it is material and relevant to the matter before the Professional Practice Panel; 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 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

126CSR4

Chair of the Professional Practice Panel 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 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 or other action against the certificate in West Virginia. The teacher 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. 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 hearing before the Professional Practice Panel, either party may provide to the Professional Practice Panel 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 in the interest of time.

4.13. 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 shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearing officer.

4.14. Failure to Participate. Upon failure of a teacher to contest the asserted causes for revocation or 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 as confessed.

4.15. Failure to Cooperate. The Superintendent may institute judicial proceedings for punishment of persons for contemptuous conduct directed to the members of the Professional Practice Panel, in the course of a proceeding.

4.16. Written Decision. Every decision of the Professional Practice Panel 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 to the Superintendent. An appropriate Order setting forth a decision regarding revocation of certification or other action shall be issued by the Superintendent. Said orders shall be filed in the office of the

126CSR4

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.

4.17. 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.

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

§126-4-5. Other Hearings.

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.

10a/126-4
1/15/99

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 1999-2000	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):

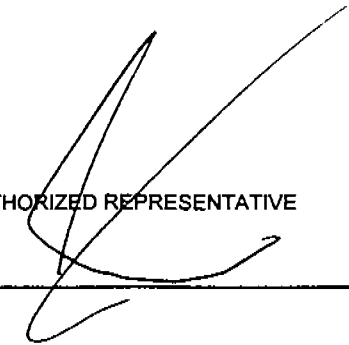
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

November 10, 1998

West Virginia Department of Education



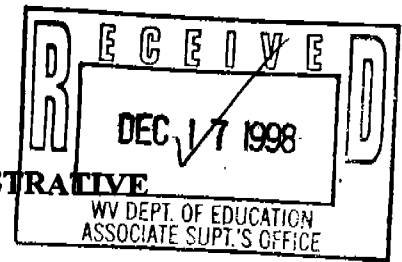
**POLICY 1340: RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS AND APPEALS
COMMENT LOG**

December 17, 1998 - December 28, 1999

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

Date	Individual/Organization	Comments	Action/ Type	Rationale
		§126-4-1. General		
		NO COMMENTS RECEIVED		
		§126-4-2. Foreword		
		NO COMMENTS RECEIVED		
		§126-4-3. General Rules		
		NO COMMENTS RECEIVED		
		§126-4-4. Hearings for Certification Suspension/ Revocation		
12-17-98	E. L. Pritt Executive Director RESA IV	126-4.14 In a hearing, which would normally be adversarial, it would be unlikely that the charged individual will have "confessed"; <u>made maybe accepted by the superintendent and Professional Practice Panel as confessed.</u>	NA	The term "as confessed" applies only to those individuals who fail to participate in the proceeding.
		§126-4-5. Other Hearings		
		NO COMMENTS RECEIVED		

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



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

Individual/Organization: E. L. PRITT

Title: EXECUTIVE DIRECTOR **Business:** RESA IV

Street Address: 404 OLD MAIN DRIVE **City/State/Zip:** SUMMERSVILLE WV 26651

COMMENTS/SUGGESTIONS	
§126-4-1. General.	
§126-4-2. Foreword.	
§126-4-3. General Rules.	
§126-4-4. Hearings for Certification Suspension/Revocation.	
126-4.14	In a hearing, which would normally be adversarial, it would be unlikely that the charged individual will have "confessed", " <u>..... made maybe accepted by the superintendent and Professional Practice Panel as confessed.</u> "

Comments/Suggestions

Policy 1340: Rules of Procedure for Administrative Hearings and Appeals

Page Two

§126-4-5. Other Hearings.

RETURN COMMENTS/SUGGESTIONS BY DECEMBER 28, 1998 TO:

William J. Luff, Jr.
Associate State Superintendent
West Virginia Department of Education
Building 6, Room 360
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330

E-Mail Comments/Suggestions to: vharris@access.k12.wv.us
