

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark In this Box

FILED

1991 AUG 14 AM 10:18

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: WV DEPT OF EDUCATION TITLE NUMBER: 126

CITE AUTHORITY: 18-2-5 & 18A-3-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4 - SBE Policies 1340 & 41

TITLE OF RULE BEING AMENDED: RULES OF PROCEDURE FOR
ADMINISTRATIVE HEARINGS AND APPEALS

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

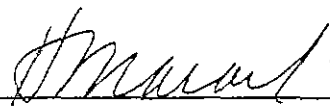
TITLE OF RULE BEING FILED AS AN EMERGENCY: Above

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached 8-12-91 letter

Use Additional Sheets if Necessary.


State Superintendent of Schools

HD NO 1340 DRAFT NO _____

SUBJECT Due Process for Administrative Hearings FUND _____

SOURCE OF REVENUE: GENERAL SPECIAL OTHER (SPECIFY) Not applicable

COST 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 AND ITEM 3 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					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -

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

No fiscal impact. —

IMPACTS _____
FISCAL: None _____

STATE STAFF: None _____

DATE _____ AGENCY _____

8/17/91 _____

AUTHORIZED REPRESENTATIVE

[Signature] _____

Policy Statement

It is the policy of the State Board of Education that all persons are entitled to due process of law, and that all hearings conducted by the State Superintendent of Schools shall be conducted in such a manner as to assure due process of law.

This policy is intended to assure that this goal is achieved by setting forth specific procedures and time lines for all parties to follow in administrative hearings.

TITLE 126
PROCEDURAL RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18-2
SERIES 4
POLICY 1340

FILED
1991 AUG 14 AM 10:18
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Rules of Procedure for Administrative Hearings
and Appeals

Section 1 General

1.1 Scope - The enclosed "Rules of Procedure for Administrative Hearings and Appeals" are promulgated for the purpose of assuring procedural due process and expeditious processing of administrative proceedings before the State Superintendent of Schools ~~of handling these problems arising in the state school system which have gone beyond the normal routine remedies which are available at the county level.~~ Nothing herein should be interpreted in such manner as to give rise to a ~~premature~~ 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. ~~The State Superintendent shall use his discretion as to whether or not he may hear a controversy at any time; and it is hereby emphasized that under §18 and §10 of the Rules the State Superintendent may waive or relax such Rules when justice is served.~~ Passage of this policy will also repeal Policy 1341, Procedures for Removal of School Officers.

1.2 Authority - W.Va. Code §18-2-5 and §18A-3-6

1.3 Filing Date -

1.4 Effective Date -

Section 2 Foreword

2.1 The following rules prescribed by the State Superintendent of Schools, and approved by the State Board of Education, govern 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, pursuant to the ~~power~~ authority granted in Article XII of the Constitution of the State of West Virginia, by the West Virginia Code and by State Board Policy 7211.

Section 3 General Rules

3.1(a) 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 ~~him~~ the Superintendent to hear and determine issues of teaching certificate revocation, removal from office, other controversies and disputes or administrative appeals or ~~a hearing officer assigned by him to conduct the proceedings in any case.~~

3.1(b) 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.

3.1(c) Definition of "Party." "Party" shall mean petitioner, respondent, intervenor. "Party" shall also mean teacher to the extent pertinent.

3.2(a) Grounds for Revocation of Certificates. The Superintendent may, after ten (10) days' notice and upon proper evidence, revoke the certificates 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.

3.2(b) 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 may be grounds for revocation of the certificate of the county superintendent.

3.2(c) 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 the State Board of Education.

3.2(d) Teaching Certificate Revocation Proceedings; Notice. Teaching certificate revocation proceedings shall be conducted before the Superintendent, or his/her designee, upon ten (10) days notice to the teacher.

The notice shall include:

- i) The date, time and place of the hearing,
- ii) A concise statement of the charges,
- iii) Mention that either the Superintendent or a designee of the Superintendent shall conduct the hearing, and
- iv) State the possible actions to be taken against the certificate of the teacher.

West Virginia Board of Education
Procedural Rule, 18-2
Series 1340, Section 3

Upon timely request by the teacher, a more definite statement of the charges shall be provided at least five (5) days prior to the hearing.

3-7 3.3 Appearance Pro Se. Any person may either appear in person or may be represented by an attorney at law admitted and authorized to practice in this State.

3.4 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.

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

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, plus oral argument.

The Superintendent may also call witnesses and question them, as well as those called by the teacher. The Superintendent may limit the number of witnesses who will be called, within reason, and may also limit the length of oral argument. Evidence not relevant shall be excluded from consideration.

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.

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

3-11 3.5 Authority of Superintendent. The Superintendent shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; ~~issue-subpoenas~~ rule upon offers of proof; take or cause depositions to be taken whenever the ends of justice would, in the Superintendent's opinion, be served thereby; regulate the course of the hearing; and dispose of procedural requests or similar matters.

3-13 3.6 Evidence. Evidence will be admissible if it is of the type commonly relied upon by the ordinary, reasonably prudent person; however, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence, including any records, investigations, reports and documents in the possession of which ~~he~~ the Superintendent desires to ~~avail~~ himself consider as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered except that the Superintendent may take official notice of any fact which may be judicially noticed by the

Courts, and, in addition, may take official notice of general, technical, or scientific facts within ~~his~~ the Superintendent's specialized 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 teaching 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.

~~3-14~~ 3.7 Stenographic Transcript. Where there is available a stenographic transcript of proceedings before a county board of education, or before any other official or body, whose action is called into question before the Superintendent, either party may, if at least three (3) 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. ~~In such event, any opposing party may subpoena such witness, or witnesses to appear personally and any party may produce any additional relevant or material evidence, oral or documentary, at the hearing. Subject to the approval of the Superintendent, the parties may agree to present the controversy solely upon such stenographic transcript.~~

~~3-15~~ 3.8 Briefs and Oral Argument. ~~If a statement of the material facts has been agreed upon by the parties and the Superintendent, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval of the Superintendent, or if for any other reason there are no issues of fact to be heard, a~~ 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 shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearing officer.

3.9 Failure to Participate. Upon failure of a teacher to contest the asserted causes for revocation of a certificate or lesser license, or upon failure of a party respondent to answer and defend against the petitioner's claims, all of the allegations/claims duly made may be accepted by the Superintendent as confessed.

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

~~3-16~~ 3.11 Written Decision. Every determination of a controversy or dispute under the school law, or of charges against any school personnel, shall be

made either by the Superintendent~~of Schools~~ or by that person assigned such duty by the Superintendent. 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 ~~in his discretion,~~ 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/her designee who has heard the matter. They 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.

~~3-17~~ 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.

Section 4 Other Hearings

4.1 Hearing on State Board of Education Intervention in County School Operations. Whenever the State Board initially determines that extraordinary circumstances may exist that could merit state intervention in the operation of a county school system, the State Board shall send notice of said determination to the county. Within five (5) days of receipt of this notification, the county may petition the State Superintendent for a hearing on these matters. The State Superintendent shall conduct said hearing within twenty (20) days of receipt of a request for hearing from the county. This hearing shall be on the sole issue of whether intervention is appropriate and supported by sufficient evidence of extraordinary circumstances. Upon completion of the hearing, the State Superintendent shall prepare a written decision as provided in Section 3.11 of these rules. After issuance of this decision, the State Board shall then take appropriate action to intervene in the operation of the county school system to the extent the State Board believes appropriate.

4.2 Hearing on Removal of a School Official. Hearings conducted for removal of a county school official shall be conducted in the same manner as a certificate revocation hearing.



WVDE

FILED

1991 AUG 14 AM 10:18

West Virginia Department of Education

Capitol Complex, Charleston 25305

Henry R. Marockie, State Superintendent of Schools

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

August 12, 1991

The Honorable Ken Hechler
Secretary of State
State of West Virginia
157-K Main Capitol
Charleston, West Virginia 25305

Re: SBE POLICIES 1340 and 1341
Emergency rule - Due process

Dear Secretary Hechler:

Please find enclosed Policy 1340 which the State Board passed on Friday, August 9, 1991, as an emergency rule. The emergency rule is required because a circuit court judge has expressed dissatisfaction with the current due process policy and the State Superintendent of Schools is, therefore, unable to conduct administrative hearings with the assurance that the underlying policy will not be successfully challenged. This policy also incorporates Policy 1341 and, therefore, that policy is repealed.

I would appreciate very much your prompt action in accepting this emergency rule in order that we may address a significant backlog of administrative hearings.

Sincerely,

Henry Marockie
State Superintendent of Schools

4366e:0109e/jbt
Enclosure