

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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1991 OCT 25 AM 9:56
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: WV Code 18-2-5, 18A-3-6

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4 (Policy 1340)

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

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 December 5, 1991

Barbara L. Estep
October 23, 1991

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

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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. Nothing herein should be interpreted in such manner as 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. 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 - October 23, 1991

1.4 Effective Date - December 5, 1991

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 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 the Superintendent to hear and determine issues of teaching certificate revocation, removal from office, other controversies and disputes or administrative appeals or 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

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Procedural Rule, 18-2
Series 1340, Section 3

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.

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.

3.3 Appearance Pro Se. Any person may either appear in person or 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.

3.5 Authority of Superintendent. The Superintendent shall have authority to administer oaths and affirmations; examine witnesses and receive evidence; 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.

3.6 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 which the Superintendent desires to 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 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.

3.7 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.

3.8 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 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 assure 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.

3.11 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 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 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.

3.12 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.

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July 26, 1991

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10-7-91



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Barbara Estep

AGENCY: Education

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 6, 1992

THE ATTACHED RULE RECENTLY 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: 4 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: Barbara L. Estep

TITLE OF PERSON SIGNING: Exec. Sec. WV Board of Ed.

DATE: Aug. 10, 1992

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