

**TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION**

**SERIES 4  
RULES OF PROCEDURE FOR RESOLVING CONTROVERSIES AND DISPUTES (1340)**

**126-4-1. General.**

1.1. Scope. -- The enclosed "Rules of Procedure for Resolving controversies and Disputes" are promulgated for the purpose of handling those 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 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 §19 of these Rules the State Superintendent may waive or relax such Rules when in his judgment justice is served.

1.2. Authority. -- W. Va. Code §18-2-5

1.3. Filing Date. -- December 27, 1982

1.4. Effective Date. -- December 27, 1982

**126-4-2. Foreword.**

2.1. The following rules prescribed by the State Superintendent of Schools, and approved by the State Board of Education, govern 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 granted in Article XII of the Constitution of the State of West Virginia and by the West Virginia Code.

**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 assigned by him to hear and determine controversies and disputes or a hearing officer assigned by him to conduct the proceedings in any case.

3.2. Filing and Service of Petition of Appeal. -- To initiate a proceeding before the Superintendent to determine a controversy or dispute arising under the school laws, a petitioner shall file with the Superintendent the original copy of the petition, together with proof of service of a copy thereof by mail properly made and prepaid on the respondent or respondents.

3.3. Format of Petition of Appeal.-- The petition must state the name and address of each petitioner, the name and address of, or a description sufficient to identify, each party respondent, and a statement of the essential facts giving rise to a dispute under the school laws, and must be verified by oath. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen and should be presented in substantially the following form found at the end of this regulation.

3.4. Filing and Service of Answer. -- Upon receipt of a petition, the Superintendent may if he deems it meritorious direct the respondent(s) to file and serve an answer, within a specified number of days. Such time may be extended by consent of the parties or by the Superintendent upon his own motion. The answer shall contain a denial or explanation as to each allegation of the petition controverted by the respondent, or a denial of any knowledge or information thereof sufficient to form a belief as to such allegation. Allegations by petitioner which are not denied or explained shall be deemed to be admitted. The answer shall also set forth the defenses to be interposed by respondent and shall be verified. The original copy of the answer shall be filed with the Superintendent, together with proof of service of a copy thereof upon the petitioner(s).

3.5. Amendment of Petition and Answer. -- The Superintendent may order the amendment of any petition or answer, or any petitioner may amend his petition, and any respondent may amend his answer, at any time and in any manner which the Superintendent deems fair and reasonable.

3.6. Permission to Intervene. -- The Superintendent may allow any person upon a showing that he may be substantially and specifically affected by the proceeding, to intervene as a party in the whole or any portion of the proceeding, and may allow any other interested person to participate by presentation of argument, orally or in writing, or for any other limited purpose, as the Superintendent may order.

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

3.8. Conference of Parties. -- After an answer has been filed or the time for doing so has expired, the Superintendent may summon the parties to appear before him at a conference for the purpose of eliminating or simplifying issues, obtaining admission(s) of fact or of document(s) as may avoid unnecessary proof, arriving, if possible, at an agreement of facts, and otherwise expediting the determination of the controversy. The Superintendent may require the parties to submit written statements, verified by oath, as to the facts involved in any controversy or dispute, and may further require the submission of certified copies of all documents necessary to a full understanding of the controversy. For failure to appear at such conference or to participate therein or to take action required by the Superintendent by authority of this rule, the Superintendent in his discretion may make such order with respect to the continued prosecution of the matter, including dismissal of a petition or of an objection thereto, as he deems just and proper.

3.9. Dismissal of Appeal. -- At any time following the filing of petition the Superintendent, in his discretion, may dismiss the appeal on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, or other good reason.

3.10. Hearing. -- If the parties and the Superintendent are unable to agree upon a statement of the material facts, the Superintendent shall schedule a hearing in the matter upon reasonable notice to all parties of the time and place thereof. At such a hearing the

parties shall be afforded opportunity for submission of oral testimony and documentary evidence.

3.11. 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.

3.12. Subpoenas. -- Subpoenas, including subpoenas duces tecum, may be issued in the discretion of the Superintendent on his own motion or upon request of any party. Any witness summoned may request the Superintendent to vacate, or modify, a subpoena, whereupon the Superintendent shall give notice of such request to the party in whose interest the subpoena was issued. After such investigation as the Superintendent considers appropriate, he may grant the request in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

3.13. Evidence. -- All evidence, including any records, investigations, reports and documents in the possession of the Superintendent of which he desires to avail himself 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 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.

3.14. 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 so to do has

been given to opposing parties or counsel therefor, 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. 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, 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 hearer.

3.16 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 and conclusions and an appropriate order, and in his discretion, an opinion containing the reason or reasons for the decision. Such written decision and order 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

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

3.18. Relaxing of Rules. -- The rules herein contained shall be considered as general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Superintendent in connection with the hearing and determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Superintendent, in his discretion, in any case where a strict adherence thereto may be deemed by him to be inappropriate or unnecessary.--9/10/71



Chief State School Officer

Powers and Duties

Rules of Procedure for Resolving  
Controversies and Disputes

Preface

The enclosed "Rules of Procedure for Resolving Controversies and Disputes" are promulgated for the purpose of handling those 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 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 §19 of these Rules the State Superintendent may waive or relax such Rules when in his judgment justice is served.

Article A. Foreword

§1. Foreword

The following rules prescribed by the State Superintendent of Schools, and approved by the State Board of Education, govern 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 granted in Article XII of the Constitution of the State of West Virginia and by the West Virginia Code.

Article B. General Rules

§2. 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 to hear and determine controversies and disputes or a hearing officer assigned by him to conduct the proceedings in any case.

§3. Filing and Service of Petition of Appeal

To initiate a proceeding before the Superintendent to determine a controversy or dispute arising under the school laws, a petitioner shall file with the Superintendent the original copy of the petition, together with proof of service of a copy thereof by mail properly made and prepaid on the respondent or respondents.

§4. Format of Petition of Appeal

The petition must state the name and address of each petitioner, the name and address of, or a description sufficient to identify, each party respondent, and a

statement of the essential facts giving rise to a dispute under the school laws, and must be verified by oath. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen and should be presented in substantially the following form:

JOHN DOE,	:	BEFORE THE STATE SUPERINTENDENT OF
PETITIONER,	:	SCHOOLS OF WEST VIRGINIA
V.	:	PETITION OF APPEAL
RICHARD ROE,	:	
RESPONDENT.	:	

Petitioner, John Doe, residing at \_\_\_\_\_  
 hereby requests the State Superintendent of Schools to hear and determine a controversy which has arisen between petitioner and respondent by reason of the following facts:

1. (Here set forth in appropriate paragraphs the facts constituting the basis of the controversy.)

Wherefore, petitioner requests that (here set forth prayer for the relief desired).

\_\_\_\_\_  
 Signature of Petitioner or his Attorney

DATE \_\_\_\_\_

#### §5. Filing and Service of Answer

Upon receipt of a petition, the Superintendent may if he deems it meritorious direct the respondent(s) to file and serve an answer, within a specified number of days. Such time may be extended by consent of the parties or by the Superintendent upon his own motion. The answer shall contain a denial or explanation as to each allegation of the petition controverted by the respondent, or a denial of any knowledge or information thereof sufficient to form a belief as to such allegation. Allegations by petitioner which are not denied or explained shall be deemed to be admitted. The answer shall also set forth the defenses to be interposed by respondent and shall be verified. The original copy of the answer shall be filed with the Superintendent, together with proof of service of a copy thereof upon the petitioner(s).

#### §6. Amendment of Petition and Answer

The Superintendent may order the amendment of any petition or answer, or any petitioner may amend his petition, and any respondent may amend his answer, at any time and in any manner which the Superintendent deems fair and reasonable.

#### §7. Permission to Intervene

The Superintendent may allow any person upon a showing that he may be substantially and specifically affected by the proceeding, to intervene as a party

In the whole or any portion of the proceeding, and may allow any other interested person to participate by presentation of argument, orally or in writing, or for any other limited purpose, as the Superintendent may order.

§8. Appearance Pro Se

Any person may appear in person or may be represented by an attorney at law admitted and authorized to practice in this State.

§9. Conference of Parties

After an answer has been filed or the time for doing so has expired, the Superintendent may summon the parties to appear before him at a conference for the purpose of eliminating or simplifying issues, obtaining admission(s) of fact or of document(s) as may avoid unnecessary proof, arriving, if possible, at an agreement of facts, and otherwise expediting the determination of the controversy. The Superintendent may require the parties to submit written statements, verified by oath, as to the facts involved in any controversy or dispute, and may further require the submission of certified copies of all documents necessary to a full understanding of the controversy. For failure to appear at such conference or to participate therein or to take action required by the Superintendent by authority of this rule, the Superintendent in his discretion may make such order with respect to the continued prosecution of the matter, including dismissal of a petition or of an objection thereto, as he deems just and proper.

§10. Dismissal of Appeal

At any time following the filing of petition the Superintendent, in his discretion, may dismiss the appeal on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, or other good reason.

§11. Hearing

If the parties and the Superintendent are unable to agree upon a statement of the material facts, the Superintendent shall schedule a hearing in the matter upon reasonable notice to all parties of the time and place thereof. At such a hearing the parties shall be afforded opportunity for submission of oral testimony and documentary evidence.

§12. 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.

§13. Subpoenas

Subpoenas, including subpoenas duces tecum, may be issued in the discretion of the Superintendent on his own motion or upon request of any party. Any witness summoned may request the Superintendent to vacate, or modify, a subpoena, whereupon

the Superintendent shall give notice of such request to the party in whose interest the subpoena was issued. After such investigation as the Superintendent considers appropriate, he may grant the request in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

#### §14. Evidence

All evidence, including any records, investigations, reports and documents in the possession of the Superintendent of which he desires to avail himself 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 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.

#### §15. 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 so to do has been given to opposing parties or counsel therefor, 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.

#### §16. 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, 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 hearer.

#### §17. 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 and conclusions and an appropriate order, and in his discretion, an opinion containing the reason or reasons for the decision. Such written decision and order 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.

§18. Waiving of Rules

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

§19. Relaxing of Rules

The rules herein contained shall be considered as general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Superintendent in connection with the hearing and determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Superintendent, in his discretion, in any case where a strict adherence thereto may be deemed by him to be inappropriate or unnecessary. -- 9/10/71