

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED

Dec 22 9 14 AM '92

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: Drug-Free Workplace Act Act 1988 (P.L. 100-690) WV Const. Art. XII,  
§2, & WV Code 18-2-5

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_ (Repeals and replaces Policy 1461)

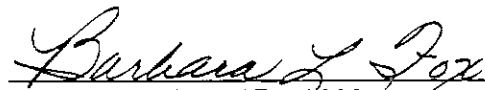
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8 (Policy 1461)

TITLE OF RULE BEING AMENDED: Drug-Free Workplace

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 February 1, 1993

  
December 17, 1992

4.20

HB NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Drug-free Workplace FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

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	\$	\$		\$	\$
PERSONAL SERVICES	\$	\$	\$	\$	\$
CURRENT EXPENSES					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$	\$		\$	\$

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

NO COST TO STATE

IMPACTS  
FISCAL:

STATE STAFF:

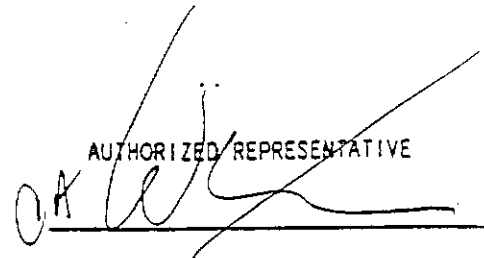
DATE

11/30/92

AGENCY

Education

AUTHORIZED REPRESENTATIVE



## EXECUTIVE SUMMARY

### DRUG-FREE WORKPLACE Policy 1461

Public Comment Period Ends November 25, 1992

Adopted December 11, 1992

#### BACKGROUND

The Drug-Free Workplace Act of 1988 (P.L. 100-690) requires that all state agencies receiving direct funds from the federal government provide a drug-free workplace. Each federal grantee is required to do the following:

- Publish a policy statement;
- Communicate this policy to its employees;
- Establish a drug-free awareness program;
- Notify the federal granting agency of any employee's conviction for any drug related violation on the Department's premises;
- Impose a sanction on any convicted employee;
- Make a good faith effort to continue to maintain a drug-free workplace.

#### PURPOSE

The purpose of the Drug-Free Workplace Policy is to provide a means to ensure a safe, healthful, productive and secure work environment.

#### CONTENTS

- The Drug-Free Workplace Policy states that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance and/or alcohol is prohibited in the workplace.
- No employee shall report for work while under the influence of alcohol and/or an illegal drug.
- The policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled work days, meal breaks, and/or occasions having a connection with the job or the agency.
- Under federal law and as a condition of employment, if the employee is convicted of any violation of a criminal drug offense in the workplace, the employee must report this conviction to his/her supervisor within five (5) days of the conviction.
- Employees who are in violation of the provisions of the Drug-Free Workplace Act shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program.

#### IMPACT

The West Virginia Department of Education will be in compliance with federal regulations. Each employee will be required to participate in the drug awareness program. Each county board of education shall develop a policy containing the standards of this policy. The Drug-Free Workplace Policy indicates that the employer cares about its employees.

Title 126  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF EDUCATION  
CHAPTER  
SERIES 8  
Policy 1461

FILED

Dec 22 9 15 AM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE: DRUG-FREE WORKPLACE

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Section 1. General

1.1 ~~Scope---This policy is in compliance with the Drug-Free Workplace Act 1988 and will require that the West Virginia Department of Education provide a drug awareness which all employees must participate.~~

Scope - This policy applies to all employees of the West Virginia Department of Education and to all county boards of education in the State of West Virginia.

1.2 ~~Authority---Drug-Free Workplace Act 1988 (P.L. 100-690)~~

Authority - Drug-Free Workplace Act 1988 (P.L. 100-690), West Virginia Constitution Article XII, §2, and West Virginia Code §18-2-5.

1.3 Filing Date - December 18, 1992

1.4 Effective Date - February 1, 1993

1.5 ~~Repeal of Former Ruling---None---New Policy~~

Repeal of Former Ruling - Repeals and replaces Policy 1461.

Section 2. Purpose

~~The Drug-Free Workplace Policy will enable the West Virginia Department of Education to maintain a work environment free of illegal drugs, and to provide a drug awareness program which will inform employees of the harmful effects of alcohol and illegal drugs.~~

To provide for a Drug-Free Workplace for all persons in the public schools of West Virginia.

Section 3. Definition

3.1 Alcohol: Alcoholic beverages and any other intoxicating liquid which contains alcohol.

3.2 Contractor: Any department, division, unit, or any person responsible for the performance of work under a contract.

- 3.3 Controlled Substance: A federally regulated substance listed in Exhibit A and/or Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) and West Virginia Code §60A-2-201, et seq., (which may be amended from time to time), when taken into the body, may impair one's mental faculties and/or physical performance.
- 3.4 Conviction: A finding of guilty (including a plea of nolo contendere) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State Criminal Drug Statutes.
- 3.5 Criminal Drug Statute: A criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.
- 3.6 Drug-Free Workplace: A worksite where work is performed in connection with the employee's Department of Education employment. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.
- 3.7 Employee: Any person who works full-time, part-time, or under contract, including management or temporary staff who are directly engaged in the performance of work pursuant to the mission of the Department of Education.
- 3.8 Federal Agency: An agency as that term is defined in Section 552 (f) of Title IV, United States Code.
- 3.9 Grantee: Any department, division, unit, or any person responsible for the performance of work under the provisions of a federal grant.
- 3.10 Illegal Drug: Any drug which is not legally obtainable and is being used in a manner or for a purpose other than as prescribed.
- 3.11 Legal Drug: Prescribed drugs and over-the-counter drugs which have been legally obtained and are being used solely for the purpose for which they were manufactured or as prescribed by a physician.

#### Section 4. Content

3-1 The West Virginia Department of Education will continuously work to maintain a drug-free workplace. As required by the Drug-Free Workplace Act 1988, all employees will be informed of and required to sign the Drug-Free Workplace Policy Verification Statement. All employees will be required to participate in a drug awareness program provided by the West Virginia Department of Education.

- 4.1 It is the policy of the West Virginia Department of Education to ensure that its workplaces are free of illegal drugs and controlled substances by prohibiting the unlawful manufacture, distribution, possession or use, without medical authorization, of illegal or controlled substances and/or alcohol; the reporting to work under the influence of a non-medically prescribed controlled substance or alcohol; or possession of non-medically prescribed paraphernalia.
- 3-2 ~~The West Virginia Department of Education will take appropriate personnel action in accordance with the disciplinary procedure outlined in the West Virginia Department of Education Employee Handbook. The handbook states that "When an offense is of a magnitude to warrant it, an employee may be suspended without pay or may be dismissed from employment. Reasons for suspension or dismissal may be misuse of state property, insubordination, incompetence, willful neglect of duty, reporting to work under the influence of alcohol, narcotics, or other illegal controlled substances, fraud, activities involving conflict of interest and violations of law and/or policy of the Board. Suspension or dismissal may be effective immediately; however, action shall be taken within ten (10) workdays of knowledge of the offense." Employees may be required to satisfactorily participate in a drug abuse assistance or rehabilitation program. Rehabilitation will be provided according to the guidelines of the Public Employees Insurance Agency.~~
- 4.2 The policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled work days, meal breaks, and/or occasions having a connection with the job or the agency.
- 3-3 ~~The employee shall abide by the terms of this policy statement. The employee shall notify his/her supervisor of any criminal drug stature conviction for a violation occurring in the workplace no later than five (5) days after such conviction.~~
- 4.3 Possession and/or distribution of a controlled substance will be dealt with promptly in accordance with legal and administrative disciplinary procedures.
- 4.3.1 Employees who are in violation of the provisions of the Drug-Free Workplace Act shall be subject to disciplinary action up to and including termination and/or may be required to satisfactorily participate in a drug rehabilitation or assistance program. Rehabilitation will be provided according to the guidelines of the Public Employees Insurance Agency.

- 4.3.2 The West Virginia Department of Education will take appropriate personnel action in accordance with the disciplinary procedure outlined in the West Virginia Department of Education Employee Handbook. The handbook states that "When an offense is of a magnitude to warrant it, an employee may be suspended without pay or may be dismissed from employment. Reasons for suspension or dismissal may be misuse of state property, insubordination, incompetence, willful neglect of duty, reporting to work under the influence of alcohol, narcotics, or other illegal controlled substances, fraud, activities involving conflict of interest and violations of law and/or policy of the Board. Suspension or dismissal may be effective immediately; however, action shall be taken within ten (10) workdays of knowledge of the offense."
- 4.3.3 State or county agencies who are contractors or grantees of federal contracts or grants amounting to at least \$25,000 are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace if they make a false initial certification, or if the number of drug-related convictions of employees indicates that the employer hasn't made a good faith effort to maintain a drug-free workplace.
- 3.4 ~~Illegal-- drugs--are--defined--as--meaning--"controlled substance"--in--Schedules--I-V--of--the--United--States Controlled-Substances-Act--§202--(2)--U.S.--Code--812)--and pertinent-federal-regulations:~~
- 4.4 The policy's primary goal is to ensure that alcohol and illegal drug and/or controlled substance use is eliminated in the workplace and that the West Virginia Department of Education workplace is safe, healthful, productive, and secure for its employees and citizens.
- 4.5 As a condition of employment with the West Virginia Department of Education employees shall:
- 4.5.1 Abide by the terms of this policy; compliance is mandatory
- 4.5.2 Notify their supervisor or department head of any criminal drug statute conviction for a violation occurring in the workplace, no later than 5 days after such conviction; and
- 4.5.3 Sign the "Drug-Free Workplace Verification Statement."
- 4.6 It shall be the responsibility of the Division of Administrative Services to establish a drug awareness program for Department of Education employees to provide information on the following:

- 4.6.1 The Employee Referral Program;
- 4.6.2 The dangers of drug-abuse in the workplace;
- 4.6.3 The establishment and maintenance of a drug-free workplace;
- 4.6.4 The penalties for workplace drug-abuse;
- 4.6.5 Available drug-free literature.

#### Section 5. County Responsibility

- 5.1 Each county board of education shall develop a policy containing the standards consistent with this policy and shall require every employee to sign a copy of a drug-free workplace verification statement which states that the employee is aware of the policy and shall abide by the terms of the policy.

West Virginia Department of Education

DRUG-FREE WORKPLACE VERIFICATION STATEMENT

NAME \_\_\_\_\_ SOCIAL SECURITY NUMBER \_\_\_\_\_

ADDRESS \_\_\_\_\_ TELEPHONE \_\_\_\_\_

\_\_\_\_\_

Date Employed by West Virginia Department of Education \_\_\_\_\_

I, \_\_\_\_\_, certify that I have received a copy of the West Virginia State Drug-Free Workplace Policy.

As an employee of the West Virginia Department of Education, I agree to abide by the Drug-Free Workplace Policy which states that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance and or alcohol is prohibited in the workplace. Additionally, no employee shall report for work while under the influence of alcohol and/or an illegal drug.

The workplace shall be defined as a worksite where work is performed in connection with the employee's Department of Education employment. The workplace shall include facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas, whether owned or leased by the agency or entity.

The policy is applicable while employees are engaged in any work-related activity which includes performance of agency business during regularly scheduled work days, meal breaks, and/or occasions having a connection with the job or the agency.

In addition, I understand that under federal law and as a condition of employment, if I am convicted of any violation of a criminal drug offense in the workplace, I must report this conviction to my supervisor and the appointing authority within five (5) days of the conviction.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

WEST VIRGINIA STATE BOARD OF EDUCATION POLICY

POLICY 1461

TITLE: DRUG-FREE WORKPLACE POLICY

The West Virginia Board of Education ~~is concerned about the health and safety of all Department of Education employees and~~ recognizes the need to provide a high quality work environment. The use of alcohol and/or illegal drugs is a health and safety hazard and inhibits productivity.

Therefore, the West Virginia Department of Education shall assure full compliance with all regulations that define a drug-free workplace. The unlawful manufacture, distribution, ~~dispensing,~~ dispensation, possession or use of a controlled substance and/or alcohol are prohibited in the workplace. Additionally, no employee shall report for work on any West Virginia Department of Education project, whether on-site or in the field, while under the influence of alcohol and/or an illegal drug.



KEN HECHLER  
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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

TO: Barbara Fox

AGENCY: Board of Education

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 29, 1993

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUN 16 9 11 AM '93

FILED

THE ATTACHED RULE 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: 8 TITLE: 126 Board of 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: Betty Belcher

TITLE OF PERSON SIGNING: Secretary

DATE: July 15, 1993

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