

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

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2001 DEC 14 A 11:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Constitution, Article XII, §2, W.Va.
Code §§18-2-5, 18-2-5a, 18-2C-1 et seq., and 49-6A-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Bullying, Harassment, and Intimidation (2430)

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON January 21, 2002 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Ms. Rebecca M. Tinder, Esquire

Legal Services

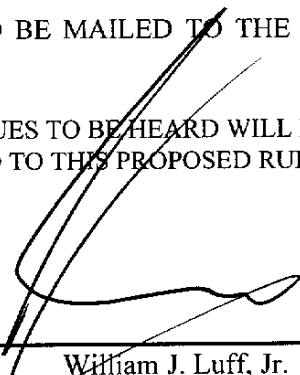
West Virginia Department of Education

Capitol Building 6, Room 362

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305

THE ISSUES TO BE HEARD WILL BE LIMITED TO THIS PROPOSED RULE



William J. Luff, Jr.
Deputy State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.00

**POLICY 2430
BULLYING, HARASSMENT, AND INTIMIDATION
EXECUTIVE SUMMARY**

Public Comment Period Ends: January 21, 2002

Background:

In accordance with West Virginia Code §18-2C-1, et seq., this policy sets the requirements for schools and school property in West Virginia to be free from all forms of bullying, harassment, and intimidation.

Purpose:

This proposed policy addresses only bullying, harassment and intimidation, and leaves current Policies 2421 and 2425 intact pending additional review.

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

FILED

2001 DEC 14 A 11: 58

**SERIES 9
BULLYING, HARASSMENT, AND INTIMIDATION (2430)**

WEST VIRGINIA
SECRETARY OF STATE

§126-9-1. General.

1.1. Scope. This rule sets the requirements for schools and school property in West Virginia to be free from all forms of bullying, harassment, and intimidation.

1.2. Authority. W. Va. Constitution, Article XII, § 2; and W. Va. Code §§ 18-2-5, 18-2-5a, 18-2C-1 et seq., and 49-6A-2.

1.3. Filing Date.

1.4. Effective Date.

1.5. Repeal of former rule. None.

§126-9-2. Definitions.

2.1. Bullying, harassment, and/or intimidation - "Bullying, harassment, and/or intimidation" is any intentional gesture, or any intentional written, verbal or physical act that:

2.1.1. a reasonable person under the circumstances should know will have the effect of:

- a. Harming a student or staff member;
- b. Placing a student or staff member in reasonable fear of harm to his/her person;
- c. Damaging a student's or staff member's property; or
- d. Placing a student or staff member in reasonable fear of damage to his/her property; or

2.1.5. Is sufficiently inappropriate, severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for a student.

2.2. Agency - The term "agency" as used herein shall include the West Virginia Board of Education, (WVBE); county boards of education (CBsE); and Regional Education Service Agencies, (RESAs).

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2.3. Governing Board - The term "governing board" as used herein shall include the WVBE, CBE, and the RESA board.

2.4. Persons - The term "persons" as used herein shall include all students, staff members and members of the public .

2.5. Staff Members - The term "staff members," as used herein shall encompass all employees of the agencies.

§126-9-3. Purpose.

3.1. The purpose of this rule is to

3.1.1. prevent all forms of bullying, harassment, and intimidation toward and by students, staff, and the public in order to protect the academic environment, and

3.1.2. to assure that the educational institutions in West Virginia respond to incidents of bullying, harassment, and intimidation in a manner that effectively addresses the incident, deters similar future incidents, and affirms respect for individuals.

3.2. These rules also provide a model for agencies to design and implement a bullying, harassment and intimidation policy with meaningful prevention and response programs, investigatory and reporting procedures, and penalties for violations of this policy.

3.3. Agencies shall collaborate with other state and local agencies in carrying out the purpose of this rule.

3.4. It is the intent of the WVBE to ensure that the learning and working environments of West Virginia schools are free from any type of bullying, harassment, and intimidation.

§126-9-4. General Statement of Policy

4.1. This rule applies to all persons at school or during any school-related activity or during any education-sponsored event whether held in a building or within or upon other property used or operated by the WVBE, a CBE, or RESA, or in another facility being used by any of those agencies.

4.2. No person, during school or any school-related activity or during any education-sponsored event, whether in a building or other property used or operated by a CBE, RESA, or the West Virginia Department of Education, or in another facility being used by any of those agencies, shall engage in bullying, harassment, or intimidation. Persons

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found to have violated this prohibition shall be subject to the penalties in Section 8.1. and any other penalties prescribed by law.

4.3. Any staff member who has or receives notice that a student has or may have been the victim of bullying, harassment, or intimidation is required to immediately report the alleged acts to the designated investigator and their failure to do so shall result in disciplinary action.

§126-9-5. Planning by Local Boards of Education.

5.1. Each agency shall develop or revise its existing policies to address all forms of bullying, harassment, and intimidation as well as include a plan for the effective implementation of this policy.

5.2. This plan shall reflect the particular needs of

5.2.1. students to study and learn in an environment free from bullying, harassment, and intimidation and

5.2.2. staff members to work in and provide an environment free from bullying, harassment, and intimidation.

5.3. To the maximum extent possible, this plan shall be developed collaboratively with state and local agencies that share the purposes of this policy.

5.4. Each agency's policy shall follow the same outline as this WVBE policy or be substantially similar.

§126-9-6. Complaint Procedures.

6.1. Each agency shall develop procedures to assure that any person who believes he or she has been the victim of any form of bullying, harassment, or intimidation and any person with knowledge or belief of conduct which may constitute any form of bullying, harassment, or intimidation toward another person has an identified mechanism to report the alleged acts immediately to an appropriate official designated by the agency's policy and that assistance be provided to individuals in need when filing such complaints. Nothing in this policy shall prevent any person from reporting bullying, harassment, or intimidation directly to the county superintendent, RESA executive director, or the State Superintendent, as appropriate, or to the West Virginia Human Rights Commission, a law enforcement agency, or any other appropriate institution or official.

6.1.1. Any person who believes he or she has been the victim of bullying, harassment, or intimidation by any other person is encouraged to immediately report the

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alleged acts to any staff member.

a. Staff members should encourage the reporter to use the report form made available by the agency but the use of formal reporting forms is not mandated.

b. Any staff member who has or receives notice that a student has or may have been the victim of bullying, harassment, or intimidation is required to immediately report the alleged acts to the designated investigator and their failure to do so shall result in disciplinary action.

c. Oral reports shall be considered complaints as well.

6.1.2. Any person with knowledge or belief that a person has or may have been the victim of bullying, harassment, or intimidation is encouraged to report the alleged acts to any staff member.

a. Staff members should encourage the reporter to use the report form made available by the agency but the use of formal reporting forms is not mandated.

b. Any staff member who has or receives notice that a student has or may have been the victim of bullying, harassment, or intimidation is required to immediately report the alleged acts to the designated investigator and their failure to do so shall result in disciplinary action.

c. Oral reports shall be considered complaints as well.

6.2. Each agency shall develop appropriate procedures for immediately and fully investigating, reporting, and responding to violations of this policy. The West Virginia Department of Education shall provide each agency with a list of resources to assist in developing these procedures. All reports received alleging any form of bullying, harassment, and/or intimidation shall be reported through the West Virginia Education Information System (WVEIS) and shall be aggregated and presented by the West Virginia Department of Education to the West Virginia Board of Education annually.

6.3. All incidents of bullying, harassment, and/or intimidation shall be reported to agency personnel who shall transmit the information to the designated investigator for immediate appropriate action as specified in §126-9-7 and §126-9-8.

6.3.1. Failure by any designated investigator and/or their supervisor to report any observed or alleged incident of bullying, harassment, or intimidation to the West Virginia Department of Education is also a serious offense and may result in disciplinary action against that individual, up to and including dismissal.

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6.4. Under certain circumstances, some forms of bullying, harassment, or intimidation may rise to the level of child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the agencies and their employees shall comply with the provisions of law for reporting such abuse.

§126-9-7. Investigation.

7.1. Upon receipt of a report or complaint alleging any form of bullying, harassment, and/or intimidation, the designated investigator shall immediately undertake or authorize an investigation. Such investigation shall immediately be conducted by the designated investigator or by a designated third party in accordance with this policy and the plan developed pursuant to Section 126-9-5.

7.2. The initiating agency shall take immediate steps, at its discretion, to protect the complainant pending completion of an investigation of alleged bullying, harassment, or intimidation.

7.3. The investigation must at a minimum consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other lawful methods and review of circumstances deemed pertinent by the investigator. When any student is to be interviewed in connection with an investigation pursuant to this policy, the student's parent, custodian, or guardian shall be notified and have the right to be present during such interview.

7.4. The investigation shall be completed forthwith. The investigator shall make a written report to the head of the initiating agency upon completion of the investigation. If the complaint involves the head of the initiating agency, the report may be filed directly with the initiating agency's governing board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

7.5. The agency shall determine whether the alleged conduct constitutes a violation of this policy.

7.6. In determining the appropriate response and/or punishment, the initiating agency shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

7.7. The result of the investigation of each complaint filed under these procedures

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shall be reported in writing to the subject of the complaint or his/her legal guardian as well as the complainant or his/her legal guardian by the head of the initiating agency, or, if the head of the agency is the subject of the complaint, by the president of the initiating agency's governing board.

7.8. Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaint is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subjects, witnesses, and investigators shall be vigorously protected and violations of such confidentiality may themselves be grounds for disciplinary action.

§126-9-8. Agency Action and Reporting.

8.1. Upon receipt of a report of substantiated bullying, harassment, or intimidation, the head of the agency or his/her governing board shall take appropriate action against those persons found to have violated this policy.

8.1.1. Appropriate action may include, but is not limited to, warning, written reprimand, suspension, exclusion, expulsion, termination, and suspension or revocation of licensure.

8.1.2. Any employee found to be in violation of this policy shall have the investigation report placed in his/her personnel file along with any and all records concerning action taken as a result of such violation of policy.

8.1.3. Those same records shall be immediately transmitted to the State Superintendent of Schools.

8.2. The head of the initiating agency shall immediately file a report with the West Virginia Department of Education of all allegations of bullying, harassment, and/or intimidation, via WWEIS.

8.3. Upon conclusion of the investigation, the head of the initiating agency shall file a report, or update their initial report, with the West Virginia Department of Education indicating whether or not the allegations were substantiated and outlining every action taken in response to any report, via WWEIS.

8.3. The head of the agency or the initiating agency's governing board shall also initiate such other action as is appropriate to prevent recurrences and protect persons in accordance with the agency's plan developed pursuant to §126-9-5.

§126-9-9. Reprisal.

9.1. Each agency shall develop discipline procedures with which to take appropriate action against any person who retaliates against another person for reporting alleged bullying, harassment, or intimidation or for testifying, assisting, or participating in an investigation, or for testifying, assisting, or participating in a proceeding or hearing relating to such bullying, harassment, or intimidation. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

§126-9-10. Right To Alternative Complaint Procedures.

10.1. These procedures do not deny the right of any person to pursue other avenues of recourse which may include filing charges with the West Virginia Human Rights Commission, initiating civil action, or seeking redress under the state criminal statutes and/or federal law.

§126-9-11. Prevention Programs.

11.1. Each agency must develop and implement forthwith an education program for each programmatic level, K-5, 6-8, and 9-12, as well as a prevention and response program for all staff and deliver it annually.

11.1.1. The programs must include, but are not limited to life skills training, character education, anger management, conflict resolution, and peer mediation skills.

11.1.2. Plans for student and staff training/education programs and their delivery shall be reported to the West Virginia Department of Education, Office of Student Services and Assessment, as scheduled and delivered.

§126-9-12. Dissemination of Policy and Training.

12.1. The agency policy or a summary shall be conspicuously posted throughout each agency's facilities in areas accessible to all persons.

12.2. The policy shall appear in the student and staff handbooks or agency handbook and copies shall be distributed to those for whom no handbook is available.

12.3. A legible copy of the policy must be disseminated to parents, custodians, or guardians of students along with an explanation of how to report violations of the policy by October 31st of each year.

12.4. The agency shall develop and implement training for students and staff concerning these rules, their implications, and means for effectively promoting the goals

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of this policy. Each agency shall document the date, time, place, number of students in attendance, number of staff in attendance, and the purpose and content of any and all training conducted for students and/or staff and submit this documentation to the West Virginia Department of Education annually.

12.5. Each governing board approved policy promulgated hereunder shall be submitted to the West Virginia Department of Education by June 30, 2002. All subsequent revisions shall likewise be remitted to the West Virginia Department of Education, Office of Student Services and Assessment, on or before the effective date of the revised policy.

12.6. Each agency's policy shall be reviewed by the agency at least bi-annually for compliance with state law and WVBE policy.

§126-9-13. Assessment of Effectiveness.

13.1. The West Virginia Department of Education shall prepare an annual report to the West Virginia Board of Education summarizing: reported and substantiated incidences of bullying, harassment, and/or intimidation; action taken in response to incidents reported; training and staff development offered by and for the agencies; and agency reported total numbers and types of prevention and response program offerings via WEIS.

FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Policy 2430: Bullying, Harassment, and Intimidation 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 97-98	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):

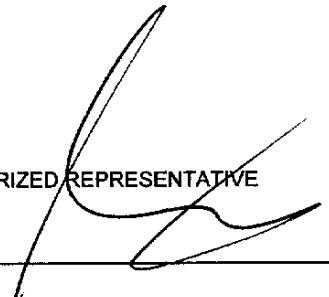
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

December 6, 2001

West Virginia Department of Education



POLICY 2430: BULLYING, HARASSMENT, AND INTIMIDATION

COMMENT PERIOD ENDS: January 21, 2002

***Directions:** Please use this form to provide comments/suggestions regarding revised Policy 2430.*

Individual/Organization: _____

Title: _____ Business: _____

Street Address: _____

City/State/Zip: _____

COMMENTS/SUGGESTIONS
§126-9-1. General.
§126-9-2. Definitions.

§126-9-3. Purpose.

§126-9-4. Application.

§126.9.5. Planning by Local Boards of Education.

§126.9.6. Complaint Procedures.

§126.9.7. Investigation.

§126.9.8. Agency Action and Reporting.

§126.9.9. Reprisal.

§126.9.10. Right to Alternative Complaint Procedures.

§126.9.11. Prevention Programs.

§126.9.12. Dissemination of Policy and Training.

§126.9.13. Assessment of Effectiveness.

Please Mail the Completed Comment Sheet to:
Rebecca M. Tinder, Esquire
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West Virginia Department of Education
1900 Kanawha Boulevard East
Building 6, Room 362
Charleston, West Virginia 25305-0330
E-Mail Address: rtinder@access.k12.wv.us
Fax No.: (304) 558-0048