



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education TITLE-SERIES: 126-141
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: County Board of Education Relations with County
Staff and School Employees (5300)
CITE STATUTORY AUTHORITY: W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler,
180 W. Va. 451, 376 S.E.2d 839 (1988); and, W. Va. Bd. of Educ. v. Bd. of
Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 11, 2022

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Michele L Blatt -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 141
COUNTY BOARD OF EDUCATION RELATIONS WITH
COUNTY STAFF AND SCHOOL EMPLOYEES (5300)**

§126-141-1. General.

1.1. Scope. -- This rule clarifies the principles of the relationship between county boards of education, county staff, and school employees.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-5-45a , 18A-2-8, and 18A-2-12.

1.3. Filing Date. -- March 9, 2022.

1.4. Effective Date. -- April 11, 2022.

1.5. Repeal of Former Rule. -- This rule amends W. Va. 126CSR141, Policy 5300, Board of Education Relations with School Employees, filed July 1, 1993, and effective August 1, 1993.

§126-141-2. Purpose.

2.1. To minimize possible disagreements or misunderstandings among county board of education members (CBEM), county staff, and school employees, the West Virginia Board of Education (WVBE) provides the following principles.

§126-141-3. Principles.

3.1. County boards of education, subject to the provisions of W. Va. Code §18 and §18A and the rules and regulations of the WVBE, are responsible for the management of the schools within each county. Their powers and responsibilities in setting policy and in providing for such management are broad but not absolute.

3.2. County staff and school employees (employees) share the responsibility for putting into effect the policies and practices approved by CBEM and such employees have certain rights and responsibilities as provided in statute and in contract.

3.3. Employees are entitled to meet, form associations, and work in concert in order to improve their circumstances or the circumstances of the schools. However, the right to strike does not exist for any public employee in the State of West Virginia, including school employees (see W. Va. Code §18-5-45a).

3.4. CBEM and their employees can most effectively carry out their responsibilities to the public and to each other by establishing clear and open lines of communication. Employees should be encouraged to make suggestions, proposals, and recommendations through appropriate channels to the county board of education. Decisions of county boards of education concerning such suggestions, proposals, and

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recommendations should be communicated to their employees clearly and openly.

3.5. Official meetings of county boards of education are public meetings and are subject to open meeting laws. Employees should be encouraged to attend such meetings without fear of reprisal.

3.6. Employees are entitled to know how well they are performing at their jobs and shall be offered the opportunity to participate in an open and honest evaluation of their performance on a regular basis, or at minimum, annually. Any decision concerning promotion, demotion, transfer, or termination of employment is based on objective factors such as an evaluation, relevant provisions of W. Va. Code, and WVBE policies, county policies, and county need. Employees are entitled to the opportunity to improve their job performance, prior to termination or transfer of services and can only do so with the assistance of regular evaluation, unless the employee has conducted acts identified in section 3.6.a.

3.6.a. Notwithstanding any other provisions of law, a county board of education may suspend or dismiss any person in its employment at any time for: immorality, incompetence, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the West Virginia Department of Health and Human Resources in accordance with W. Va. Code §49-1-1 et seq., the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, or the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge pursuant to W. Va. Code §18A-2-8.

3.6.a.1. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to W. Va. Code §18A-2-12. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the county board of education.

3.7. All employees are entitled to due process in matters affecting their employment, transfer, demotion, or promotion.

3.8. All official and enforceable personnel policies must be written and made available to every employee.

§126-141-4. Severability.

4.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.