



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-004

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Rules of Procedure for Administrative Hearings and Appeals (1340) (Procedural Rule)

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)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 04/11/2022 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Heather L. Hutchens/Kelli D. Talbott

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Policy 1340 (Procedural Rule) specifies the procedure for hearings and appeals conducted before the State Superintendent of Schools (State Superintendent), the Professional Practice Panel, the Licensure Appeal Panel, the School Bus Operator Review Panel, or a person designated by the State Superintendent to conduct hearings and/or to determine matters subject to the terms and conditions of this rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Policy 1340 (Procedural Rule) policy is being repealed and replaced because the current policy is not organized in a logical and sequential manner; the policy needs updated to reflect relevant statutory changes; and, the policy needs improvements to allow for a more orderly hearings and appeals process.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be no economic impact on revenues of state government as a result of the proposed amendment of Procedural Rule 126CSR4, Policy 1340.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be no economic impact on special revenue accounts as a result of the proposed amendment of Procedural Rule 126CSR4, Policy 1340.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be no economic impact on the state or its residents as a result of the proposed amendment of Procedural Rule 126CSR4, Policy 1340.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

There will be no economic impact on revenues of state government, special revenue accounts, or the state or its residents as a result of the proposed amendment of Procedural Rule 126CSR4, Policy 1340.

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.

Policy 1340, Rules of Procedure for Administrative Hearings and Appeals
Executive Summary

West Virginia Department of Education
Office of the State Superintendent of Schools/Legal Services

Policy Cycle: ☒ 30 Day Comment Period ☐ Adoption of Policy

Policy Process: ☐ Revision ☒ Repeal and Replace ☐ New

Introduction: This policy is a repeal and replace of Policy 1340 filed on July 11, 2014, and effective August 11, 2014. The policy is being repealed and replaced because the current policy is not organized in a logical and sequential manner; the policy needs updated to reflect relevant statutory changes; and, the policy needs improvements to allow for a more orderly hearings and appeals process.

Background: The current version of Policy 1340 became effective on August 11, 2011, over seven years ago. Since that time, the Legislature has amended W. Va. Code §18A-3-6 with regard to the revocation and suspension of teaching certificates and has amended W. Va. Code §18A-4-8e with regard to the revocation of school bus operator certificates.

Proposed Changes:

- The policy is reorganized in more logical and sequential manner so that similar concepts are grouped together under the appropriate headings.
- There are amendments to the policy to add definitions for terms.
- There are amendments to the policy to address the procedure for the automatic revocation of teacher and school bus operator certificates for specified criminal convictions consistent with statutory amendments to W. Va. Code §18A-3-6 and §18A-4-8e, which authorize the State Superintendent to impose such automatic revocations.
- There are amendments to the policy that reflect existing unwritten procedures for notification to teachers or school bus operators that an investigation has been initiated by the WVDE that may give rise to action against the teacher's or school bus operator's certification and requiring the teacher or school bus operator to disclose the pending investigation to any prospective employers.
- There is an amendment to the policy that specifies the manner of service for hearing notices.
- There are amendments to the policy specifying procedures for the issuance and service of subpoenas and subpoenas duces tecum in light of an amendment to W. Va. Code §18A-3-6(a) granting the State Superintendent subpoena authority.
- There are amendments to the policy specifying the burden of proof in proceedings involving teachers' and school bus operators' certification.
- There are amendments to the policy outlining the possible actions that may be taken in the context of teacher or school bus operator certification proceedings in light of amendments to W. Va. Code §18A-3-6 that authorize the State Superintendent to issue admonishments, enter into consent agreements, and require training.
- There are amendments to the policy addressing amendments to W. Va. Code §18A-3-6 pertaining to revocation of licensure in circumstances in which a teacher is found to have committed an act of sex abuse of a student or minor; to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children; committed an act of child endangerment; solicited, encouraged, engaged in or consummated an inappropriate relationship

Policy 1340, Rules of Procedure for Administrative Hearings and Appeals

Executive Summary

with a child or minor; exploited a student within 12 months of the student's graduation; or, engaged in grooming of a student or minor.

- There are amendments to the policy reflecting that after June 30, 2022, appeals of final decisions entered by the State Superintendent shall be filed with the West Virginia Intermediate Court of Appeals
- There are amendments to the policy that reflect the current practice of reporting disciplinary action against a teacher's license to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.

Impact: The proposed amendments will make the policy easier to read and understand; bring the policy in to conformance with statutory amendments; codify current practices and procedures that weren't reflected in the policy; and, provide for a more orderly hearings and appeals process

Action:

- ☒ Release for 30 day public comment.
- ☐ Approve by WVBE with effective date of ____/____/20____.

Policy 1340, Rules of Procedure for Administrative Hearings and Appeals
List of Stakeholders

West Virginia Department of Education

External Stakeholders

- Sherrone Hornbuckle, General Counsel, Cabell County Schools
- Lindsay McIntosh, General Counsel, Kanawha County Schools

Internal Stakeholders

- Heather Hutchens, General Counsel, Legal Services
- Stephanie Abraham, Attorney, Legal Services
- Kelli Talbott, Attorney, Legal Services

126CSR4

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 4
RULES OF PROCEDURE FOR
ADMINISTRATIVE HEARINGS AND APPEALS (1340)**

§126-4-1. General.

1.1. Scope. -- This rule specifies the procedure for hearings and appeals conducted before the State Superintendent of Schools (State Superintendent), the Professional Practice Panel, the Licensure Appeal Panel, the School Bus Operator Review Panel, or a person designated by the State Superintendent to conduct hearings and/or to determine matters subject to the terms and conditions of this rule.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; and W. Va. Code §§18-2-5, 18-3-4, 18A-3-2a, 18A-3-6, 18A-4-8e, and 29A-5-1(a).

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeal of Former Rule. -- This procedural rule repeals and replaces W. Va. 126CSR4, Policy 1340, Rules of Procedure for Administrative Hearings and Appeals, filed July 11, 2014, and effective August 11, 2014.

§126-4-2. Definitions.

2.1. Automatic Revocation.

2.1.a. The immediate termination of all rights and privileges of teacher licensure or certification as provided for by W. Va. Code §18A-3-6(b) as a result of a conviction for the crimes of child abuse or sexual abuse under W. Va. Code §61-8D-3 or §61-8D-5, or a comparable statute or statutes in another state; any criminal offense that requires a teacher to register as a sex offender; any criminal offense which has an element of delivery or distribution of a controlled substance; or, a guilty plea or conviction for first or second degree murder under W. Va. Code §61-2-1, or a conviction under any law of the United States or any other state for an offense with the same elements as those offenses described in W. Va. Code §61-2-1.

2.1.b. The immediate termination of all rights and privileges of school bus operator certification as provided for by W. Va. Code §18A-4-8e(j)(4)(C) as a result of a conviction for the crimes of child abuse or sexual abuse under W. Va. Code §61-8D-3 or §61-8D-5, or a comparable statute or statutes in another state; any criminal offense that requires a school bus operator to register as a sex offender; or, any criminal offense which has an element of delivery or distribution of a controlled substance.

2.2. Conflict Resolution Process for Citizens. Dispute resolution process set forth in W. Va. 126CSR188, Policy 7211, Conflict Resolution Process for Citizens.

2.3. Designee. A person designated by the State Superintendent to conduct hearings and/or to determine matters pursuant to the terms and conditions of this policy.

2.4. Grooming, as used in section 3.1 and section 7.11.e. Befriending and establishing an emotional connection with a student or minor, which may include the family of the student or minor, to lower the student's or minor's inhibitions with the objective of committing sexual abuse, child trafficking, child prostitution, the production of child pornography, or any other offense for which a teacher's license may be revoked under W. Va. Code §18A-3-6(b).

2.5. Intercounty Student Transfer Appeal. The appeal process for denials of student transfer applications set forth in W. Va. 126CSR189, Policy 7212, Intercounty Student Transfer Appeal.

2.6. Licensure Appeal Panel. The seven individuals selected to hear and make recommendations to the State Superintendent, as set forth in W. Va. 126CSR154, Policy 5050, West Virginia Commission for Professional Teaching Standards (Policy 5050), regarding the denial for cause of a teacher's license pursuant to W. Va. Code §18A-3-6.

2.7. Preponderance of the evidence. Evidence which is of a greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

2.8. Professional Practice Panel. The seven individuals selected to hear and make recommendations to the State Superintendent, as set forth in Policy 5050, regarding the revocation, suspension, imposition of limitations or conditions, admonishment, recall or reinstatement of a teacher's license pursuant to W. Va. Code §18A-3-6 and W. Va. 126CSR136, Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications.

2.9. Revocation. The termination of all rights and privileges of licensure or certification as imposed by consent agreement or by a written decision issued after a hearing.

2.10. School Bus Operator. Any person certified by the State Superintendent pursuant to policy, rule, or regulation of the West Virginia Board of Education (WVBE) or pursuant to statute.

2.11. School Bus Operator Applicant. Any person on whose behalf a county board of education or other public institution has submitted a request for certification to operate a school bus to the State Superintendent pursuant to policy, rule, or regulation of the WVBE or pursuant to statute.

2.12. School Bus Operator Review Panel. The seven individuals selected to hear and make recommendations to the State Superintendent regarding the revocation, suspension, recall, or denial for cause of a school bus operator certificate pursuant to W. Va. Code §18A-4-8e(j)(4)(D) and W. Va. 126CSR92, Policy 4336, West Virginia School Bus Transportation Regulations, Procedures, and Specifications for the Design and Equipment of Schools Buses (Policy 4336).

2.13. State Superintendent. The State Superintendent of Schools.

2.14. Suspension. A temporary cessation of all rights and privileges of licensure or certification for a specified period of time or until certain conditions are met which have been imposed by consent agreement or by a written decision issued after a hearing.

2.15. Teacher. Any person certified or otherwise professionally licensed by the State Superintendent pursuant to policy, rule, or regulation of the WVBE or pursuant to statute, including but not limited to administrators, professionals, paraprofessionals, coaches, and holders of service certificates.

2.16. Teacher Applicant. Any person applying for a teacher license issued by the State Superintendent pursuant to policy, rule, or regulation of the WVBE or pursuant to statute.

§126-4-3. Grounds for Discipline or Recall of a Teaching License or a School Bus Operator Certificate and Grounds for Denial of a License or Certificate for Cause.

3.1. Pursuant to W. Va. Code §18A-3-6(a), the State Superintendent may, after ten days' notice and upon proper evidence, revoke, suspend, impose limitations, and/or admonish the license of a teacher for intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea, or plea of no contest to any charge involving sexual misconduct with a minor or student; or for using fraudulent, unapproved, or insufficient credit to obtain the certificates. Further, pursuant to W. Va. Code §18A-3-6(c), following a hearing, any teacher found to have committed any act of sexual abuse of a student or minor or to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children or an act of child endangerment or solicited, encouraged, engaged in, or consummated an inappropriate relationship with any student, minor, or individual; exploited a student by engaging in any of the aforementioned illegal or inappropriate conduct which then escalated into a relationship with the exploited student within 12 months of that student's graduation; or engaged in grooming a student or minor; shall have his or her license revoked for a period of time not less than five years.

3.2. Pursuant to W. Va. Code §18-3-6(e), if a teacher's license or certificate has been granted through an error, oversight, or misinformation, the State Superintendent may recall the certificate and make corrections as will conform to the requirements of the law and the WVBE.

3.3. Pursuant to W. Va. Code §18A-4-8e(j)(4)(B) and section 21.1 of Policy 4336, the State Superintendent may, after ten days' notice and upon proper evidence, suspend, revoke, or refuse to renew the certification, or impose any condition upon the certification of any school bus operator for intemperance, untruthfulness, cruelty, or immorality; conviction of a felony or a guilty plea or plea of no contest to a felony charge; conviction of or a guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or student; using fraudulent, unapproved, or insufficient credit to obtain the certificate; or just and sufficient cause specified in section 21.1 of Policy 4336.

3.4. Pursuant to W. Va. Code §18A-4-8e(j)(4)(F), if a school bus operator's certificate has been granted through an error, oversight, or misinformation, the State Superintendent may recall the certificate and make such corrections as will conform to the requirements of law and WVBE rules.

3.5. Pursuant to W. Va. Code §18A-3-1(i), the State Superintendent shall not issue a teaching certificate or license to any person who is not of good moral character and who is not physically, mentally, and emotionally qualified to perform the duties of a teacher.

3.6. Pursuant to section 17.3 of Policy 4336, the State Superintendent may refuse to issue certification to a school bus operator applicant who is not of good moral character and physically, mentally, and

emotionally qualified to perform the duties of operator safely and efficiently, including just and sufficient cause set forth in section 15.3 of Policy 4336.

§126-4-4. Reporting Requirements.

4.1. Pursuant to W. Va. Code §18A-3-6(d), any county superintendent, public school principal, or charter public school administrator who knows of any acts on the part of any teacher for which a certificate may be revoked or for which other action may be taken in accordance with W. Va. Code §18A-3-6, shall report this, together with all the facts and evidence, to the State Superintendent for such action as in the as in the State Superintendent's judgment 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, if willful, may be grounds for revocation of the certificate of the county superintendent.

4.2. Pursuant to W. Va. Code §18A-4-8e(j)(4)(E), it is the duty of any county superintendent who knows of any acts on the part of a school bus operator for which a certificate may be revoked in accordance with W. Va. Code §18A-4-8e to report the same, together with all the facts and evidence, to the State Superintendent for such action as in the State Superintendent's judgment may be proper.

§126-4-5. Investigations.

5.1. Upon receipt of sufficient information that may give rise to proceedings involving the revocation, suspension, or recall of a teacher's license or a school bus operator's certificate, the State Superintendent shall cause to be issued a Notice of Investigation to the teacher or school bus operator. The notice may contain, as appropriate, a summary of the information received; any options for resolution; and, potential outcomes if the information is substantiated.

5.2. A teacher or school bus operator who receives a Notice of Investigation and seeks employment in any public school system during the investigation, must disclose the investigation to prospective employers at the time the teacher or school bus operator makes an application, regardless of whether the application or interview process calls for such disclosure.

§126-4-6. Denial for Cause Proceedings.

6.1. Upon receipt of a notice of recommendation of denial for cause of a teaching application from the West Virginia Department of Education (WVDE) Certification Services or of a school bus operator application from the WVDE School Transportation Services, the applicant may submit a written request for an appeal hearing within 30 days of receipt of the written denial.

6.2. If no such hearing request is timely received, the application may be denied for cause by the State Superintendent. Such denial for cause shall be ordered in writing by the State Superintendent and served upon the applicant by personal service made by a person over 18 years of age or by registered or certified mail, return receipt requested.

6.3. If an appeal hearing request is timely received by a teacher applicant, then the matter will be scheduled for hearing before the Licensure Appeal Panel.

6.4. If an appeal hearing request is timely received by a school bus operator applicant, then the matter will be scheduled for hearing before the School Bus Operator Review Panel.

§126-4-7. Reinstatement Proceedings.

7.1. Except in the case of permanent revocation, a teacher or school bus operator whose license or certificate has been suspended or revoked may apply for reinstatement upon the expiration of the suspension or upon the expiration of the time specified for reapplication after a period of revocation, and once any conditions for reinstatement imposed by the State Superintendent have been satisfied.

7.2. An application for reinstatement shall be considered an application for initial license under W. Va. Code §18A-3-10, and the applicant must therefore be fingerprinted for a criminal background check.

7.3. The WVDE shall conduct an investigation to determine whether the teacher or school bus operator has satisfied any and all requirements for reinstatement and can demonstrate a record of rehabilitation which supports that the teacher or school bus operator presently possesses the integrity, moral character and competence to resume the duties of a teacher or a school bus operator.

7.4. If, during the period of suspension or revocation, the requirements for the teacher's or school bus operator's certification have changed, the teacher or school bus operator must satisfy those requirements before reinstatement may be considered.

7.5. If the WVDE determines that all reinstatement requirements, including rehabilitation, have been met, the State Superintendent may reinstate a teacher's or school bus operator's certificate without a hearing.

7.6. If the WVDE determines that a question exists as to a teacher's or a school bus operator's fulfillment of all requirements, and therefore, a hearing is necessary, it shall submit a written report to the Professional Practice Panel or the School Bus Operator Review Panel, as appropriate.

7.7. After receipt of the WVDE's written report, the Professional Practice Panel or the School Bus Operator Review Panel shall conduct a hearing and make a recommendation to the State Superintendent as to whether the teacher's or school bus operator's certificate should be reinstated and whether any conditions or restrictions should be placed upon the reinstated certificate. In determining whether the teacher or school bus operator has been rehabilitated, the Professional Practice Panel or the School Bus Operator Review Panel shall consider the seriousness of the conduct that formed the basis of the suspension or revocation.

§126-4-8. General Hearing Procedures.

8.1. Quorum.

8.1.a. In any matter in which the Professional Practice Panel, Licensure Appeal Panel, or the School Bus Operator Review Panel convenes to hear and make a recommendation to the State Superintendent, a quorum, or majority, of the Panel members shall be required.

8.2. Open Hearings.

8.2.a. In cases involving the revocation, suspension, recall, denial for cause, or reinstatement of a teacher's license or a school bus operator's certificate, all hearings shall be open to the public, unless the teacher, teacher applicant, school bus operator, or school bus operator applicant requests that the hearing be closed.

8.2.b. In all hearings before the State Superintendent, designee, or a Panel, portions of a hearing may be closed to the public when evidence under the Family Education Rights and Privacy Act, 12 U.S.C. § 1232g, is presented.

8.2.c. In all hearings before the State Superintendent, designee, or a Panel, students shall be referred to by their initials, whenever possible.

8.3. Notice.

8.3.a. At least ten days prior to any hearing, the State Superintendent shall cause a written notice of hearing to be served upon a teacher, teacher applicant, school bus operator, school bus operator applicant, or any other person who is a party to the proceeding to which the hearing pertains.

8.3.b. Notice given under this section shall include:

8.3.b.1. a statement of the date, time, place, and nature of the hearing;

8.3.b.2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

8.3.b.3. a reference to the statute, policy, rule, or regulation involved in the proceeding;

8.3.b.4. a short, plain description of any alleged conduct or alleged facts that have given rise to the hearing; and

8.3.b.5. the possible actions that may be taken after the hearing is concluded.

8.3.c. Service of the written notice shall be made upon a party by personal service or by registered or certified mail, return receipt requested.

8.3.d. Upon timely request by a party, a more definite statement of the issues and/or claims involved in the proceeding shall be provided.

8.3.e. After a hearing has begun, the State Superintendent, designee, or the Chair of the appropriate Panel, may adjourn the hearing from one day to another, or to another place, by announcing the date, time and place for reconvening the hearing.

8.3.f. In cases involving the revocation, suspension, recall, denial for cause, or reinstatement of a teacher's license or a school bus operator's certificate, if a party fails to appear and defend after proper notice, the State Superintendent, designee, or the appropriate Panel may deem the allegations and/or claims admitted and confessed by default.

8.4. Continuances.

8.4.a. Upon receipt of a notice of hearing, any party to the proceeding may request a continuance of the hearing.

8.4.b. The State Superintendent, designee, or the Chair of the appropriate Panel, may grant a continuance of the hearing for good cause shown.

8.4.c. A continuance may be ordered by the State Superintendent, designee, or the Chair of the appropriate Panel.

8.5. Subpoenas and Subpoenas Duces Tecum.

8.5.a. In cases involving the revocation, suspension, recall, denial for cause, or reinstatement of a teacher's license or a school bus operator's certificate, the State Superintendent may issue subpoenas to compel testimony or subpoenas duces tecum to compel the production of documents, books, records, papers, and other items.

8.5.b. Any party to a teacher licensure or school bus operator certification proceeding may request the issuance of subpoenas or subpoenas duces tecum to compel testimony or production of documents at a hearing. Such a request shall be in writing to the State Superintendent and shall contain the names and addresses of the witnesses and/or a description of the documents sought.

8.5.c. Any party who requests the issuance of subpoenas or subpoenas duces tecum for a hearing shall be responsible for proper service and payment of fees for the attendance and travel of witnesses in accordance with the requirements of the West Virginia Administrative Procedures Act, W. Va. Code §29A-5-1(b). The written request for the issuance of subpoenas or subpoenas duces tecum shall contain a statement acknowledging that the requesting party agrees to pay such fees.

8.5.d. Every subpoena or subpoena duces tecum shall be served at least five days before the date of the hearing either by personal service made by a person over 18 years of age or by registered or certified mail. If served by registered or certified mail, a return acknowledgement or receipt signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service.

8.5.e. In the case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the State Superintendent may make application in the circuit court of the county in which the hearing is being held to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from a circuit court or a refusal to testify therein.

8.6. Evidence.

8.6.a. The formal rules of evidence as applied in civil cases shall be relaxed.

8.6.b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

8.6.c. Hearsay evidence may be admitted if it is of a type that is commonly relied upon by reasonably prudent people.

8.6.d. The rules of privilege recognized by West Virginia law shall apply.

8.6.e. Revocation, suspension, or other action against a teacher's license or a school bus operator's certificate in another jurisdiction or refusal by another jurisdiction to issue a teacher's license or a school bus operator certificate shall be prima facie evidence of grounds for revocation, suspension, denial for cause, or other action against the license or certificate in West Virginia.

8.6.f. The State Superintendent, designee, or any Panel authorized to conduct hearings and make recommendations to the State Superintendent shall have the authority to:

8.6.f.1. receive evidence;

8.6.f.2. determine the weight and credibility of any evidence and/or testimony;

8.6.f.3. determine the admissibility of evidence;

8.6.f.4. examine witnesses;

8.6.f.5. set reasonable times within which a party may present evidence and within which a witness may testify;

8.6.f.6. permit and limit oral argument;

8.6.f.7. require written arguments to be filed by the parties on a fixed date;

8.6.f.8. take administrative notice of any fact which may be judicially noticed by a court or any fact within the specialized expertise or knowledge of the State Superintendent, and allow any party a fair opportunity to refute a fact so noticed;

8.6.f.9. regulate the course of the hearing;

8.6.f.10. determine procedural matters;

8.6.f.11. take or cause depositions to be taken whenever fundamental fairness or other circumstances warrant; and

8.6.f.12. perform other duties or take other action necessary to a fair and proper hearing.

8.7. Oaths or Affirmations.

8.7.a. Each witness who provides testimony at a hearing shall be administered an oath or affirmation by the State Superintendent, a court reporter, or any other person authorized to administer oaths or affirmations.

8.8. Burden of Proof.

8.8.a. In cases involving the revocation, suspension, recall, or denial for cause of a teacher's license or a school bus operator's certificate, the State Superintendent has the burden of proof to show by a preponderance of the evidence that the claims set forth in the notice of hearing are true.

8.8.b. In cases involving the reinstatement of a teacher's license or a school bus operator's certificate that has been suspended or revoked, the teacher or school bus operator applying for reinstatement has the burden of proof to show by a preponderance of the evidence that reinstatement is warranted.

8.8.c. In cases involving the discipline of a teacher's license in which it is alleged that the teacher has engaged in conduct involving intemperance, cruelty, or immorality; or, using fraudulent, unapproved, or insufficient credit to obtain licensure, the State Superintendent must demonstrate a rational nexus between the conduct of the teacher and the teacher's job performance.

8.8.d. In cases involving the discipline of a school bus operator's certificate in which it is alleged that the school bus operator has engaged in conduct involving intemperance, untruthfulness, cruelty, or immorality; using fraudulent, unapproved, or insufficient credit to obtain certification; or, conduct constituting just and sufficient cause for discipline as specified by WVBE rule or policy, the State Superintendent must demonstrate a rational nexus between the conduct of the school bus operator and the school bus operator's job performance.

8.9. Recording and Transcripts.

8.9.a. All hearings shall be recorded by electronic means or by a court reporter.

8.9.b. A transcript of the hearing may be produced, if necessary.

8.9.c. Where there is an available recording or transcript of proceedings before a county board of education, or before any court of record or other official or body concerning issues which form or support the basis for a hearing, any party may seek to have such recording or transcript considered as evidence in lieu of producing the witness or witnesses whose testimony is contained in the recording or transcript. Any party seeking to introduce such a recording or transcript shall provide copies of the same to all other parties and the person or Panel presiding over the hearing.

8.10. Representation.

8.10.a. Parties may represent themselves; may be represented by a lay representative; or, by an attorney licensed to practice law in the State of West Virginia.

8.10.b. Attorneys who are not licensed to practice law in the State of West Virginia, and who seek to represent a party in a proceeding subject to the terms and conditions of this policy, must comply with Rule 8.0, Admission Pro Hac Vice, of the West Virginia Rules for Admission to the Practice of Law promulgated by the West Virginia Supreme Court of Appeals, before representing any party.

8.11. Decisions.

8.11.a. At the conclusion of the hearing, if post-hearing written arguments are not to be submitted, the State Superintendent, designee, or a Panel may adjourn into closed session to deliberate upon a decision.

8.11.b. Upon completion of deliberations, the State Superintendent, designee, or a Panel may exit the closed session and orally announce a decision to the parties.

8.11.c. Whether or not a decision is orally announced to the parties, all decisions shall be reduced to writing and shall contain findings of fact, conclusions of law, and an appropriate resolution. If a hearing is conducted by a Panel or a designee, a written recommended decision containing proposed findings of fact, conclusion of law, and a recommended resolution shall be issued to the State Superintendent.

8.11.d. The following are the possible actions that may be recommended by a designee or Panel, or taken by the State Superintendent, after a hearing with regard to discipline of a teacher's license or a school bus operator's certificate:

8.11.d.1. revocation with the condition that the teacher or school bus operator may apply for reinstatement after the expiration of five years from the effective date of the revocation and with or without specified conditions that must be met for reinstatement;

8.11.d.2. permanent revocation with the condition that the teacher or school bus operator may not apply for reinstatement;

8.11.d.3. suspension for a fixed period of time with or without specified conditions that must be met upon application for reinstatement after the period of suspension;

8.11.d.4. recall, if a license or certificate was granted through error, oversight, or misinformation;

8.11.d.5. admonishment;

8.11.d.6. limitations or conditions upon a license or certificate; or

8.11.d.7. no action.

8.11.e. Notwithstanding the possible actions that may be recommended or taken as set forth in section 8.11.d, in cases where a teacher is found to have committed any act of sexual abuse of a student or minor or to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children or an act of child endangerment or solicited, encouraged, engaged in, or consummated an inappropriate relationship with any student, minor, or individual; exploited a student within 12 months of that student's graduation; or engaged in grooming a student or minor, the teacher's license shall be revoked for a period of not less than five years as required by W. Va. Code §18A-3-6(c).

8.11.f. The following are the possible actions that may be recommended by a designee or Panel, or taken by the State Superintendent, after a hearing with regard to the denial for cause of an application for a teacher's license or school bus operator's certificate:

8.11.f.1. granting the application with or without specified conditions;

8.11.f.2. denying the application with the condition that the denial is permanent and the applicant may not re-apply at a later date;

8.11.f.3. denying the application with the condition that the applicant may reapply after a specified period of time and with or without specified conditions that must be met upon reapplication.

8.11.g. Upon receipt of a recommended decision, the State Superintendent shall review the same, along with the record, and issue a final order:

8.11.g.1. adopting or modifying the recommended decision, in whole or in part;

8.11.g.2. declining to adopt the recommended decision, in whole or in part;

8.11.g.3. remanding the proceeding to the Panel or designee with instructions for further proceedings; or

8.11.g.4. remanding the proceeding to the Panel or designee with instructions for further consideration without reopening the hearing.

8.11.h. If the State Superintendent modifies or declines to adopt a recommended decision of a Panel or designee, either in whole or in part, the State Superintendent shall issue a reasoned, articulate explanation and a recitation of the underlying evidence or other matters upon which the State Superintendent bases the decision and the particularized findings of fact and conclusions of law that support the decision.

8.11.i. Within 30 days following the State Superintendent's receipt of a recommended decision of a Panel or designee, the State Superintendent shall issue a final order which shall be served upon the parties by personal service or by registered or certified mail, return receipt requested.

8.11.j. If a hearing is conducted by the State Superintendent, the State Superintendent shall issue a written decision containing findings of fact and conclusions of law within 30 days following the conclusion of the hearing. The written decision shall be served upon the parties by personal service by a person 18 years of age or by registered or certified mail, return receipt requested.

8.11.k. The State Superintendent has discretion to extend the 30 day period referred to in sections 8.11.i and 8.11.j by giving written notice to the parties.

8.12. Waiver of Rules.

8.12.a. A party to a proceeding subject to the terms and conditions of this policy may voluntarily waive any of the provisions of this policy relating to notice and the presentation of evidence.

§126-4-9. Appeal of State Superintendent's Decision.

9.1. Any party, other than the WVDE, adversely affected by a final decision entered by the State Superintendent may appeal the same within 30 days of receipt of the decision.

9.1.a. Final decisions entered by the State Superintendent before June 30, 2022, may be appealed to the Circuit Court of Kanawha County or the circuit court of the county in which the party resides or does business.

9.1.b. Final decisions entered by the State Superintendent after June 30, 2022, may be appealed to the West Virginia Intermediate Court of Appeals.

9.2. Upon the WVDE's receipt of a notice of an appeal, a transcript of the proceedings held in accordance with the provisions of this policy shall be made and forwarded to all named parties at the expense of the Department.

§126-4-10. Informal Disposition of Cases.

10.1. The State Superintendent may accept the voluntary surrender of a teacher's license or school bus operator's certificate in resolution of any pending allegations against the teacher or school bus operator. If a voluntary surrender is accepted, the State Superintendent shall enter an appropriate order of revocation.

10.2. The State Superintendent may enter into consent agreements requiring specific training in order for a teacher to maintain a certificate.

§126-4-11. Automatic Revocation.

11.1. Pursuant to W. Va. Code §18A-3-6(b) and W. Va. Code §18A-4-8e(j)(4)(C), the State Superintendent may, without notice and hearing, automatically revoke a teacher's license or school bus operator's certificate based upon the grounds specified in such code sections.

11.2. The State Superintendent shall enter an appropriate order upon automatically revoking a license or certificate and serve such order upon the teacher or school bus operator by personal service or registered or certified mail, return receipt requested.

§126-4-12. Reporting of Decisions.

12.1. Pursuant to W. Va. Code §18A-3-6(f), the State Superintendent shall maintain a public database of individuals who have had adverse action taken against their teaching certificate issued by the State Superintendent. The database shall be located on the WVDE's website. Individuals whose certificates have been suspended or revoked by the State Superintendent are not eligible to be employed by a county board of education or charter public school unless the certificate is subsequently reinstated by the State Superintendent.

12.2. All disciplinary actions taken against a teacher's license and/or certificate shall be reported by the State Superintendent to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.

§126-4-13. Severability.

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

Policy 1340, Rules of Procedure for Administrative Hearings and Appeals
Comment Response Form

Comment Period Ends: April 11, 2022

NOTICE: *Comments, as submitted, shall be filed with the West Virginia Secretary of State's Office and open for public inspection and copying for a period of not less than five years.*

The following form is provided to assist those who choose to comment on **Policy 1340, Rules of Procedure for Administrative Hearings and Appeals**. Additional sheets may be attached, if necessary.

Name: _____ Organization: _____

Title: _____

City: _____ State: _____

Please check the box below that best describes your role.

Please check the box below that best describes your role.

- | | | | |
|---|---|--|---|
| ☐ County Board Member | ☐ Professional Support Staff | ☐ Service Personnel | ☐ Higher Education |
| ☐ Superintendent | ☐ Principal | ☐ Parent/Family | ☐ Legislator |
| ☐ Central Office Staff | ☐ Teacher | ☐ Community Member | ☐ Other |

COMMENTS/SUGGESTIONS
§126-4-1. General.
§126-4-2. Definitions.
§126-4-3. Grounds for Discipline or Recall of a Teaching License or a School Bus Operator Certificate and Grounds for Denial of a License or Certificate for Cause.
§126-4-4. Reporting Requirements.
§126-4-5. Investigations.
§126-4-6. Denial for Cause Proceedings.
§126-4-7. Reinstatement Proceedings.

**Policy 1340, Rules of Procedure for Administrative Hearings and Appeals
Comment Response Form**

§126-4-8. General Hearing Procedures.
§126-4-9. Appeal of State Superintendent's Decision.
§126-4-10. Informal Disposition of Cases.
§126-4-11. Automatic Revocation.
§126-4-12. Reporting of Decisions.
§126-4-13. Severability.

Please direct all comments to:

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