



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/9/2022 10:55:50 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Education TITLE-SERIES: 126-008
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Drug-Free Workplace (1461)
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: 07/11/2022 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Heather L. Hutchens, General Counsel, and Kelli Talbott, Attorney
ADDRESS: WVDE Legal Services, Capitol Bldg. 6, Suite 650
1900 Kanawha Blvd., E, Charleston, WV 25305
EMAIL: hhutchens@k12.wv.us

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 1461 provides for a drug-free workplace for all persons in the WVBE, WVDE, and public schools of West Virginia that are safe, healthful, productive, and secure and provides a template for county boards of education and public charter public schools to use in developing local drug-free workplace policies.

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

The proposed amendments are a result of legislation requiring the WVBE to promulgate rules related to staff use of medical cannabis.

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 126CSR8, Policy 1461.

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 126CSR8, Policy 1461.

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 126CSR8, Policy 1461.

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 126CSR8, Policy 1461.

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 1461, Drug-Free Workplace
List of Stakeholders**

West Virginia Department of Education

External Stakeholders

- Dr. Justin Schooley, Human Resources Director, Berkley County
- Dr. Sarah Stankus, Superintendent, Former Principal, Upshur County
- Dr. Deidre Cline, Superintendent, Wyoming County
- John Rodgers, Principal, Mountaineer Middle School, Upshur County
- Rose Kelly, Principal, Ridgeview Elementary School, Raleigh County
- Paul Mihalko, Principal, Morgantown High School, Monongalia County
- Tommy Grant, Pro-Start Teacher, Carver Career Center, WV Teacher of the Year Finalist, Kanawha County
- Holly McBride, Teacher, Wyoming County
- Christy Landes, Teacher, Hardy County
- Jason Frame, Director, Office of Medical Cannabis, WVDHHR (and his staff)
- Karen Thornton, Assistant Attorney General assigned to WV Division of Personnel

Internal Stakeholders

- Jonah Adkins, Coordinator, Accountability Services
- Taran Wolford, Director, Human Resources
- Kelli Talbott, Attorney, Legal Services
- Heather Hutchens, General Counsel, Legal Services
- Adam Canter, Director, CTE Services and Support
- Rick Gillman, Director, Career Technical Education Services

126CSR8

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 8
DRUG-FREE WORKPLACE (1461)

§126-8-1. General.

1.1. Scope. -- This rule applies to all employees of the West Virginia Board of Education (WVBE), West Virginia Department of Education (WVDE), county boards of education, and ~~public~~ charter public schools in the State of West Virginia.

1.2. Authority. -- W. Va. Constitution, Article XII, §2, W. Va. Code §§~~16A-15-5(2)~~, §18-2-5, and the Drug-Free Workplace Act of 1988 (41 U.S.C. 81).

1.3. Filing Date. -- ~~April 15, 2021~~.

1.4. Effective Date. -- ~~May 17, 2021~~.

1.5. Repeal of Former Rule. -- This ~~legislative~~ rule amends W. Va. 126CSR8, Policy 1461, Drug-Free Workplace, filed ~~December 22, 1992~~ April 15, 2021, and effective ~~February 1, 1993~~ May 17, 2021.

§126-8-2. Purpose.

2.1. To provide for a drug-free workplace for all persons in the WVBE, WVDE, and public schools of West Virginia that are safe, healthful, productive, and secure.

2.2. To provide a template for county boards of education and ~~public~~ charter public schools to use in developing local drug-free workplace policies.

§126-8-3. Definitions.

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

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

3.3. Controlled Substance. Federally regulated substance listed in the Control Substances Act, (21 U.S.C. 812) and W. Va. Code §60A-2-201, et seq., which, when taken into the body, may impair one's mental faculties and/or physical performance.

3.4. Conviction. 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. Criminal statute involving the manufacture, distribution, dispensation, use, or possession of any controlled substance.

3.6. Drug-Free Workplace. Worksite where work is performed in connection with the employee's 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. Person who works full-time, part-time, or under contract, including management or temporary staff.

3.8. Federal Agency. Agency as defined in 18 U.S.C. 6.

3.9. Grantee. Department, division, unit, or any person responsible for the performance of work under the provisions of a grant.

3.10. Illegal Drug. Drug which is not legally obtainable or a drug that 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 and as prescribed by a physician.

3.12. Medical Cannabis. Cannabis for certified medical use as set forth in the Medical Cannabis Act, W. Va. Code §§16A-1-1, et seq.

§126-8-4. Content.

4.1. This policy ensures that workplaces are free of illegal drugs and controlled substances by prohibiting the unlawful manufacture, distribution, dispensation, 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.

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

4.3. Possession and/or distribution of a controlled substance will be dealt with promptly in accordance with legal requirements and administrative disciplinary procedures.

4.3.a. 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. Resources shall be provided in accordance with West Virginia Public Employees Insurance Agency guidelines.

4.3.b. The WVDE will take appropriate personnel action in accordance with the disciplinary procedure outlined in the WVDE Employee Handbook.

4.3.c. State or county agencies that are contractors or grantees 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 has not made a good faith effort to maintain a drug-free workplace.

4.4. As a condition of employment with the WVDE, employees shall:

4.4.a. comply with the terms of this policy;

4.4.b. notify their supervisor of any criminal drug or alcohol violation occurring in the workplace or conviction outside of the workplace, no later than five days after such violation or conviction occurs; and

4.4.c. sign the Drug-Free Workplace Verification Statement.

4.5. Resources shall be made available to employees by the WVDE Office of Human Resources, according to the guidelines of the West Virginia Public Employees Insurance Agency.

4.6. Consistent with W. Va. Code §16A-15-4, an employee shall not be subject to discipline based solely upon the following:

4.6.a. the employee has been issued a medical cannabis identification card by the West Virginia Department of Health and Human Resources, Bureau for Public Health, pursuant to the Medical Cannabis Act, W. Va. Code §§16A-1-1, et seq.; and/or

4.6.b. the employee has been issued a physician certification to use medical cannabis as part of the treatment of a serious medical condition as that term is defined by W. Va. Code §16A-2-1(a)(31); and/or

4.6.c. the employee has been issued a caregiver's identification card issued by the West Virginia Department of Health and Human Resources, Bureau for Public Health, pursuant to the Medical Cannabis Act, W. Va. Code §§16A-1-1, et seq.

4.7. Employees are prohibited from using, possessing, being under the influence of, and/or storing medical cannabis in the workplace.

4.7.a. This policy is not intended to prohibit the lawful use of medical cannabis by employees outside of the workplace, provided that when the employee returns to or is otherwise in the workplace, the employee is not under the influence of medical cannabis. An employee may be considered under the influence of medical cannabis when the employee manifests specific symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's position. Such symptoms may include, but are not limited to, impairment of speech, physical dexterity, agility, coordination, demeanor, and/or behavior.

4.8. Employees whose positions are subject to United States Department of Transportation drug testing requirements, such as school bus operators, are prohibited from using medical cannabis at any time inasmuch as applicable federal regulations do not authorize medical cannabis permitted under state law to be a valid medical explanation for an employee's positive drug test result.

4.9. Because cannabis and/or marijuana is a controlled substance under federal law, any employee who carries, possesses, or transports a firearm or ammunition as authorized and while performing the duties of the employee's position is prohibited from using medical cannabis at any time pursuant to federal gun law requirements.

§126-8-5. County Board of Education and ~~Public~~ Charter Public School Responsibility.

5.1. County boards of education and ~~public~~ charter public schools 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 comply with the terms of the policy.

§126-8-6. Severability.

6.1. 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.

West Virginia Department of Education

DRUG-FREE WORKPLACE VERIFICATION STATEMENT

NAME: _____

EMPLOYEE IDENTIFICATION NUMBER: _____

ADDRESS: _____ TELEPHONE NUMBER: _____

Date Employed by West Virginia Department of Education: _____

I, _____, certify that I have received a copy of West Virginia Board of Education Policy 1461, Drug-Free Workplace.

As an employee of the West Virginia Department of Education, I agree to comply with Policy 1461 which states that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance and/or alcohol is prohibited in the workplace. Additionally, I shall not 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 West Virginia Department of Education employment. The workplace shall include but not be limited to 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 workdays, meal breaks, and/or occasions having an official connection with the job or the agency.

In addition, I understand that, as a condition of employment, I shall notify my supervisor of any criminal drug or alcohol violation occurring in the workplace or conviction outside of the workplace, no later than five days after such violation or conviction occurs.

Employee Signature

Date

**Policy 1461, Drug-Free Workplace
Comment Response Form**

COMMENT PERIOD ENDS: July 11, 2022

COMMENT RESPONSE FORM

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 1461, Drug-Free Workplace. Additional sheets may be attached, if necessary.

Name: _____ Organization: _____

Title: _____

City: _____ State: _____

Please check the box below that best describes your role.

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> County Board Member | <input type="checkbox"/> Professional Support Staff | <input type="checkbox"/> Service Personnel | <input type="checkbox"/> Higher Education |
| <input type="checkbox"/> Superintendent | <input type="checkbox"/> Principal | <input type="checkbox"/> Parent/Family | <input type="checkbox"/> Legislator |
| <input type="checkbox"/> Central Office Staff | <input type="checkbox"/> Teacher | <input type="checkbox"/> Community Member | <input type="checkbox"/> Other |

COMMENTS/SUGGESTIONS
§126-8-2. Purpose.
§126-8-3. Definitions. (3.12. Medical Cannabis.)
§126-8-4. Content. (Sections 4.6 through 4.9.)

Please direct all comments to:
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