

WEST VIRGINIA  
SECRETARY OF STATE

Betty Ireland

ADMINISTRATIVE LAW DIVISION

Form #5

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2005 MAY 16 P 4:32

OFFICE 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: W. Va. Constitution, Article XII, §2 and W. Va. Code §§16-9A-4, 16-9A-9, 18-2-5, 18-2-5a, 18-2-7b, 18-2-9, 18-5-13, 18A-1-1, 18A-5-1, 18A-5-1a, and 61-7-2

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

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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).

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Substance Abuse and Tobacco Control (2422.5)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS July 1, 2005.



Steven L. Paine  
Deputy State Superintendent of Schools

# EXECUTIVE SUMMARY

## WEST VIRGINIA DEPARTMENT OF EDUCATION

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### **Policy Number And Title:**

Policy 2422.5  
Substance Abuse and Tobacco Control

### **Background:**

West Virginia Board of Education Policy 2422.5 Substance Abuse was originally adopted in 1982 and Policy 2422.5A Tobacco Control was originally adopted in 1998. Each of these policies outlines preventive and protective measures for addressing substance abuse and prohibiting the use or distribution of alcohol, tobacco and other drugs within school settings and activities. Following the revision and adoption of West Virginia Board of Education Policy 4373, Student Code of Conduct, and 2422.8, Medication Administration, it was determined by West Virginia Department of Education staff as well as county safe and drug-free schools coordinators that West Virginia Board of Education Policies 2422.5 and 2422.5A needed to be revised and combined in order to properly align.

### **Proposals:**

Policy 2422.5 Substance Abuse and Tobacco Control prohibits the use and/or distribution of alcohol, tobacco and other drugs by any person on school property. It also prohibits the use and/or distribution of alcohol, tobacco and other drugs by students and staff at school related events conducted off school property. The policy outlines requirements for county substance abuse and tobacco control policies that include: problem identification procedures; intervention strategies; prevention education programs; treatment referral procedures; enforcement guidelines and support programs.

### **Impact:**

This revised/combined policy maintains the content of both previous policies but combines the two to simplify the Board's policy list. The revision/combination also allows for references to more recently passed policies such as 4373 Student Code of Conduct and 2422.8 Medication Administration.

### **Comment Period:**

The Comment Period ended on April 13, 2005. No comments were received.

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TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

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SERIES 23  
SUBSTANCE ABUSE AND TOBACCO CONTROL (2422.5)

**§126-23-1. General.**

1.1. Scope. - This policy sets the requirements for students in West Virginia schools to be educated in an alcohol, tobacco and drug free climate that supports student academic achievement and personal-social development. This policy is to be read in conjunction with W. Va. 126CSR99, West Virginia Board of Education Policy 4373: Student Code of Conduct (hereinafter Policy 4373), W. Va. 126CSR27, West Virginia Board of Education Policy 2422.8: Medication Administration, W. Va. 126CSR8, West Virginia Board of Education Policy 1461: Drug-Free Workplace, W. Va. 126CSR142, West Virginia Board of Education Policy 5310: Performance Evaluation of School Personnel and W. Va. 126CSR44E, West Virginia Board of Education Policy 2520.5: Health Content Standards and Objectives for West Virginia Schools (hereinafter Policy 2520.5).

1.2. Authority. - W. Va. Constitution, Article XII, W. Va. §2, W. Va. Code §§16-9A-4, 16-9A-9, 18-2-5, 18-2-5a, 18-2-7b, 18-2-9, 18-5-13, 18A-1-1, 18A-5-1, 18A-5-1a, and 61-7-2.

1.3. Filing Date. - May 16, 2005.

1.4. Effective Date. - July 1, 2005.

1.5. Repeal of Former Rule. - This policy repeals and replaces W. Va. 126CSR23, West Virginia Board of Education Policy 2422.5: Substance Abuse Policy, filed December 27, 1982 and effective February 27, 1983 and repeals W. Va. 126CSR66, West Virginia Board of Education Policy 2422.5A: Tobacco Control, filed April 13, 1998 and effective May 13, 1998.

**§126-23-2. Purpose.**

2.1. The purpose of this policy is to provide preventive and protective measures for addressing substance abuse and prohibiting the use or distribution of alcohol, tobacco and other drugs within school settings and activities. This policy is intended to promulgate a positive, pro-active approach to the control of alcohol, tobacco and other drugs.

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### **§126-23-3. Application.**

3.1. These regulations apply to any person present in or upon any property owned, leased or operated by the West Virginia Department of Education, West Virginia Board of Education, a county board of education or a Regional Education Service Agency (hereinafter RESA); to any person present at any education-sponsored event; to any person present on a school bus or other vehicle used for a school related event or other school/county or RESA function; to any person present at any school-sponsored activity or event, whether the activity or event is held on school grounds, in a building or other property used or operated by a county board of education, RESA or the West Virginia Department of Education, West Virginia Board of Education or in any other facility or upon any other property being used by any of these agencies.

3.2. No person shall at any time possess, distribute or use any alcohol product or illegal substance in any area defined in Section 3.1 of this policy.

3.3. No person shall, at any time, possess drug paraphernalia as defined in W. Va. Code §47-19-3, in any area defined in Section 3.1 of this policy. In addition, students shall not, at any time, possess tobacco paraphernalia in areas defined in Section 3.1 of this policy.

3.4. No person shall at any time distribute or use any tobacco product in any area defined in Section 3.1 of this policy. In addition, students shall not possess at any time any tobacco product in areas or situations defined in Section 3.1. or at any school or county sponsored event or school-related event.

3.5. Individuals supervising students off school grounds are prohibited from distributing or using alcohol, tobacco products or illegal substances in the presence of students and/or at any time while engaged in activities directly involving students.

3.6. No school or board of education property, as defined in Section 3.1 of this policy, or school, county, RESA or state publication may be used for the advertisement of any tobacco or alcohol product.

3.7. Groups using areas described in Section 3.1 shall sign agreements with the county board of education or RESA agreeing to comply with this policy and to inform students, parents and spectators by public address systems that this policy remains in force on evenings, weekends and any other time that school is not in session. A summary of this policy shall be attached to all requests for use of school facilities.

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3.8. Students who behave in a manner that does not promote a nurturing, orderly and safe environment conducive to learning or who violate the terms of this policy will be subject to the disciplinary actions as outlined in Policy 4373.

3.9. This policy does not supercede any rights granted to special education students by federal or state law or other West Virginia Board of Education policies.

### **§126-23-4. Definitions.**

4.1. "Alcohol" means any substance containing an intoxicating element.

4.2. "ATOD" means Alcohol, Tobacco and Other Drugs. ATOD is used to refer to the use of all substances including, but not limited to, alcohol, tobacco, inhalants, marijuana, cocaine, LSD, PCP, amphetamines, heroin, steroids, look-alikes and/or any other of those substances commonly referred to as *designer drugs*.

4.3. "Distribution" means the sale, giving, transfer, delivery, trade or exchange in any manner of any ATOD.

4.4. "Drug" means any substance that acts on the central nervous system to alter behavior(s) and/or thought processes.

4.5. "Illegal substance" means any drug which is not legally obtained and/or any drug being used by a person other than the person for whom it was prescribed and/or for a purpose contrary to which the drug was intended for medical therapy and/or against the recommendation(s) of the manufacturer.

4.6. "Paraphernalia" means drug paraphernalia as defined by W. Va. Code §47-19-3 and any item, thing or device used for the facilitation or administration of tobacco products or other illegal substances.

4.7. "Possession" means the presence of ATOD or paraphernalia, in any amount, on the person or body, or under the general direction or control, of an individual found in or upon the premises described in Section 3.1. Possession shall include, but is not limited to, presence of ATOD or paraphernalia in a school locker or backpack or in or on any other item owned or under the general direction or control of any individual found in or upon the premises described in Section 3.1.

4.8. "Public" means any individual accessing school property or programs for business, activities, conferences, visitation or other activities as defined in Section 3.1.

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4.9. "School" means any building, ground(s) or other property including automobiles or other vehicles owned or operated by the county board of education, RESA, West Virginia Department of Education or West Virginia Board of Education.

4.10. "School staff" means those individuals employed full time, part time or on contract with any county board of education, RESA, West Virginia Department of Education or West Virginia Board of Education.

4.11. "Student" means anyone who is enrolled in public school or enrolled in an educational program on board of education property.

4.12. "Tobacco product" means any items containing the leaves of cultivated tobacco plants, in any form or amount, dried and processed. Products include, but are not limited to cigarettes, cigars, snuff, spit tobacco, smokeless tobacco or pipe tobacco.

4.13. "Use" means ingestion, injection, absorption or inhalation of an illegal substance or being under the influence of said substance.

### **§126-23-5. Implementation.**

5.1. All county boards of education and RESAs must have a substance abuse and tobacco control policy that meets the stipulations of this policy and adheres to the guidelines herein by August 1, 2005. The county/RESA policy must represent the minimum components required by this policy. Counties and/or RESAs may be more restrictive in their own policies and/or add components to reflect county or system policies and procedures.

5.2. The county/RESA substance abuse and tobacco control policy shall include, at a minimum:

5.2.1. the responsibility of school/RESA administration to implement provisions of this policy with specific regard to education, communication and enforcement provisions;

5.2.2. clear procedures for identification, intervention and referral of students with substance abuse problems;

5.2.3. a plan for maintenance of an environment for students, staff and visitors that presents no physical harm, discomfort or unsanitary condition resulting from use or abuse of ATOD;

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5.2.4. procedures for communicating the policy to students, school staff, parents or families, visitors and the community-at-large through:

- a. staff development;
- b. employee and student handbooks;
- c. parent/guardian notification;
- d. general public notification (e.g., signs, announcements); and
- e. attaching a summary of this policy on to all requests for school facility use.

5.2.5. a plan for implementing required kindergarten through 12<sup>th</sup> grade preventive education, as outlined in Policy 2520.5 shall be coordinated with Safe and Drug-Free School (Goals and Objectives) to provide a comprehensive kindergarten through 12<sup>th</sup> grade substance abuse prevention curriculum for all children. School administrators, Local School Improvement Councils and school curriculum teams shall assure that prevention education efforts are comprehensive, coordinated and age appropriate. Examples include: developmental guidance, advisor-advisee, peer involvement, after school programs and integration into instructional objectives;

5.2.6. the manner in which the RESA, county or school plans to provide or make referral to voluntary support programs (such as a local mental health provider or tobacco cessation program or hotline programs); address the physical, psychological and social issues associated with addiction; provide on-going support and reinforcement necessary for desired behavior change; and provide information about available programs to all 4<sup>th</sup> through 12<sup>th</sup> grade students and staff on a regular basis; and

5.2.7. enforcement provisions for students, staff and the public are as follows:

a. enforcement provisions for students may include, but are not limited to: counseling, school/community service, voluntary cessation programs, parent/guardian notification, mandatory education sessions, alternative to suspension programs, plan for behavior improvement, policy notification, and/or prosecution;

b. enforcement provisions for staff may include, but are not limited to: referral to an Employee Assistance Program, conference with supervisor and disciplinary actions consistent with county, RESA or W. Va. 126CSR162, West Virginia Board of Education Policy 5902: Employee Code of Conduct;

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c. enforcement provisions for the public may include, but are not limited to: request to stop use or leave premises, deny access to school property and/or police notification;

d. in taking action against a student for violation of this policy, the school/county or RESA administration shall follow appropriate due process procedures. If the student is an *"Eligible Handicapped Student"* according to W. Va. 126CSR16, West Virginia Board of Education Policy 2419: Regulations for the Education of Exceptional Students, (hereinafter Policy 2419), any action taken against the student must comply with, and must not be in violation of Policy 2419. All disciplinary action taken against the student shall be in accordance with local, state and federal law; and

e. county/school or RESA policies shall identify responses and/or interventions that are consistent with the levels specified in Policy 4373 to address violations. The specific procedures to be followed when any staff member observes any violations outlined in this substance abuse and tobacco control policy shall be outlined in county/school policies and procedures.

5.3. The West Virginia Department of Education, RESAs and county boards of education shall provide training and technical assistance in research-based and effective models for prevention education in the areas of alcohol, tobacco and illegal substances. Training, technical assistance and support shall also be provided in the effective use of student assistance teams to identify students who are at-risk and to develop interventions to assure school success for these students.

### **§126-23-6. Policy Review.**

6.1. Each county/RESA shall review its substance abuse and tobacco control policy every two years and make appropriate modifications as necessary.

### **§126-23-7. Severability.**

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

## FISCAL NOTE WORKSHEET

(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 2422.5: Substance Abuse and Tobacco Control FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) N/A

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) N/A

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) N/A

**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	THEREAFTER
1. ESTIMATED TOTAL COST	\$	\$	\$	\$	\$
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$

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

No cost.

DATE

3/1/05

AGENCY

West Virginia Department of Education

AUTHORIZED REPRESENTATIVE

