



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: 126-003
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Notice and Conduct of Meetings (1241)
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: 07/15/2024 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Kelli Talbott, General Counsel
ADDRESS: WVDE Office of Legal Services, Capitol Bldg. 6, Suite 650
1900 Kanawha Blvd. E., Charleston, WV 25305
EMAIL: kelli.talbott@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 1241 governs the procedure for meetings held by the West Virginia Board of Education (WVBE).

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

The proposed amendments require WVBE meetings to be live-streamed via audio and/or video; require that directions be given to the public regarding accessing the live-stream; require the recorded live-stream to be posted to the WVBEs website within five business days after the meeting; and, allow persons scheduled to make presentations at WVBE meetings to request in advance of WVBE meetings for permission to participate telephonically or by electronic conferencing.

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 126CSR3, Policy 1241.

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 126CSR3, Policy 1241.

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 126CSR3, Policy 1241.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 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 126CSR3, Policy 1241.

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

Yes

Kelli D Talbott -- 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 1241, Notice and Conduct of Meetings
List of Stakeholders**

West Virginia Department of Education

External Stakeholders

- Inga Barker, Superintendent, McDowell County Schools
- Jim Brown, Executive Director, West Virginia School Board Association
- Charles Hedrick, Superintendent, Pendleton County Schools

Internal Stakeholders

- Jeff Kelley, Assistant Superintendent
- Kelli Talbott, General Counsel
- Sonya White, Deputy Superintendent

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TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION

SERIES 3
NOTICE AND CONDUCT OF MEETINGS (1241)

§126-3-1. General.

1.1. Scope. -- This rule governs the procedure for meetings held by the West Virginia Board of Education (WVBE).

1.2. Authority. -- W. Va. Constitution, Article XII, Section 2, W. Va. Code §§18-2-3, 18-2-4, 18-2-5, and 6-9A-3.

1.3. Filing Date. -- ~~November 15, 2018.~~

1.4. Effective Date. -- ~~December 17, 2018.~~

1.5. Repeal of Former Rule. -- This rule ~~repeals and replaces~~ amends 126CSR3, Policy 1241, Notice and Conduct of Meetings, filed ~~January 10, 2002~~ November 15, 2018, and effective ~~February 9, 2002~~ December 17, 2018.

§126-3-2. Meetings.

2.1. As required by W. Va. Code §18-2-3, the WVBE shall hold shall hold at least six meetings in every year at such times and places as it may prescribe. It may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the call of the president of the WVBE. Regular meetings will be held on the second Wednesday of each month unless the WVBE or its president choose to meet on an alternate day.

2.2. Special meetings may be held at such other times as may be necessary, as determined by the WVBE and/or its president.

2.3. Emergency meetings, as that term is defined by W. Va. Code §6-9A-2(2), may be held, as determined by the WVBE and/or its president.

2.4. At its first regular meeting at the beginning of every fiscal year the WVBE shall elect one of its members as president, who may serve an unlimited number of terms, but no more than two consecutive terms, and one as vice president who may serve an unlimited number of terms.

2.5. The WVBE shall appoint a secretary who shall keep a record of the proceedings of the WVBE and shall perform such other duties as it may prescribe.

2.6. The president shall preside at all WVBE meetings at which he or she is present and control debate and discussion. If the president is absent from a meeting, the vice-president shall preside. In the absence of the vice-president, another member may be designated by the president to preside over the meeting.

2.7. All members, including the president and vice president, may make and second motions on all matters before the WVBE at a meeting. Any motion not receiving a second shall die.

2.8. A majority of the WVBE shall constitute a quorum at any meeting for the transaction of business.

2.9. The secretary of the WVBE shall electronically file a notice of each of the WVBE's regular and special meetings with the Secretary of State for publication on the Secretary of State's website and shall place each notice on the West Virginia Department of Education's (WVDE) website. Each notice shall contain the date, time, place, and purpose of the meeting and shall be filed or placed in a manner to allow each notice to appear on the Secretary of State's website and the WVDE's website at least five business days prior to the date of the meeting.

2.10. The secretary of the WVBE shall electronically file a notice of an emergency meeting with the Secretary of State and place a notice on the WVDE's website as soon as practicable prior to the meeting. The emergency meeting notice shall state the date, time, place, and purpose of the meeting and the facts and circumstances of the emergency.

2.11. All meetings of the WVBE are open to the public except as otherwise provided in W. Va. Code §6-9A-4.

2.12. Upon a majority vote of the members present at any meeting, the WVBE may go into executive session and exclude the public to discuss any agenda item that fits within the exceptions provided in W. Va. Code §6-9A-4. Any action taken as a result of a discussion in executive session must be taken in open session except that the WVBE may vote in executive session to give its attorney settlement authority for threatened or pending claims against the WVBE. Provided that, pursuant to W. Va. Code §6-9A-4(b)(11), if a settlement is reached, then the terms of the settlement agreement shall be reported by the WVBE at an open meeting and entered into its meeting minutes within a reasonable time after the settlement is concluded.

2.13. ~~Open meetings of the WVBE may be recorded using audio recording equipment. Copies of such audio recordings shall be available to the public within a reasonable time after the meetings and remain available for five years following the recording date.~~ Video and/or audio of open WVBE meetings shall be live-streamed, recorded, and posted to the WVDE's website within five business days of the meeting. The recording shall remain available to the public for five years following the recording date. Directions for accessing the live stream shall be made available to the public on the WVDE's website and on the WVBE's agendas.

2.14. A member of the public who disrupts a WVBE meeting, to the extent that the orderly conduct of the meeting is compromised, may be removed from a meeting at the discretion of the WVBE and/or its president.

§126-3-3. Agendas.

3.1. At least three business days prior to the date of regular meeting, an agenda for each regular and special meeting shall be made available in the WVBE's office and on the WVDE's website. An agenda which has been issued at least three days in advance of a meeting may be amended up to two days before

the meeting. In calculating business days, the day of the meeting, as well as Saturdays, Sundays, and legal holidays are excluded.

3.2. The agenda for an emergency meeting shall be made available in the WVBE's office and on the WVDE's website as soon as practicable prior to the meeting.

3.3. Items listed on a meeting agenda shall be stated in a specific manner so as to make the public aware of the particular matters to be dealt with at the meeting.

3.4. Any discussion of an item of business that may ultimately lead to or result in official action at that meeting, or at some future meeting, shall appear on the agenda of the meeting at which the discussion is held.

3.5. In the discretion of the president, the order of items contained on a meeting agenda may be changed in the course of a meeting as circumstances require.

3.6. Any member of the WVBE or the public may request that an item be placed on the agenda of a WVBE meeting. Provided that, it shall be within the discretion of the president whether a requested agenda item is placed upon an agenda.

§126-3-4. Participation in Meetings Using Technology.

4.1. Members of the WVBE may participate in meetings by telephone or other electronic conferencing. A speaker phone or other audio and/or video device shall be used at the meeting site to enable those present, including the public, to hear and/or see the members who are attending and participating by telephone or other electronic conferencing.

~~4.2. The WVBE may, at its discretion and based upon availability of necessary technology, allow members of the public to listen to open meetings by electronic streaming. Information regarding the streaming may be posted on the WVDE's website in advance of the meeting.~~

~~4.3~~2. The WVBE may, at its discretion and in special circumstances with advanced approval, allow limited participation in meetings by persons who are scheduled to address the WVBE by telephone or other electronic conferencing. Requests to participate by telephone or other electronic conferencing as allowed under this section, shall be made to the WVBE at least three business days prior to the scheduled meeting.

§126-3-5. Meeting Materials.

5.1. The WVBE's secretary shall post WVBE meeting agendas on the WVDE's website at least five business days prior to a meeting.

5.2. A member of the public may submit informational materials pertaining to an item on a WVBE meeting agenda to the WVBE's secretary for distribution to and consideration by the WVBE. The WVBE or its president may establish a deadline for submission of such informational materials prior to a meeting. Any informational materials received after a deadline established by the WVBE or its president may not be considered by the WVBE.

§126-3-6. Public Comment.

6.1. In the discretion of the president, the WVBE may have a public comment period to allow members of the public to address the WVBE during a meeting. Provided that, the president may choose to allow a member of the public to speak to coincide with a topic on the agenda, if the speaker's comments pertain to an agenda item.

6.2. The WVBE may provide a sign-in sheet and electronic sign-in in advance of a meeting to allow members of the public to sign up to speak during a public comment period. Members of the public must sign up to speak no later than ten minutes prior to the start of a meeting.

6.3. The president may reasonably limit the amount of time that each member of the public has to provide public comment during a WVBE meeting.

6.4. The WVBE shall not deliberate and/or take action on any topic addressed by a member of the public that is not on the meeting agenda. The WVBE may, in its discretion, direct that any topic raised by a member of the public during a meeting be placed on the agenda for a future meeting to allow the WVBE to deliberate and/or take action on the topic.

§126-3-7. Media.

7.1. Pursuant to W. Va. Code §6-9A-9, any radio or television station is entitled to broadcast all or any part of an open WVBE meeting. Provided that, the WVBE may regulate the placement of equipment necessary for broadcasting, photographing, filming or recording a meeting so as to prevent undue interference with the meeting. Provided further that, if the WVBE determines in good faith that the size of the meeting room is such that all of the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then it may require pooling of equipment and the personnel operating it.

§126-3-8. Committees and Subcommittees.

8.1. Any committee, subcommittee or other subunit formed or appointed by the WVBE to make decisions for or recommendations to the WVBE shall be subject to the requirements of the Open Governmental Proceedings Act, W. Va. Code §§6-9A-1 *et seq.*

§126-3-9. Minutes.

9.1. The secretary of the WVBE shall prepare written minutes of all WVBE open meetings.

9.2. A copy of the minutes of open meetings shall be available to the public within a reasonable time after the meetings and shall include the following information:

9.2.a. The date, time, and place of the meeting;

9.2.b. The name of each WVBE member present or absent;

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9.2.c. All motions, proposals, resolutions, orders, and measures proposed, the name of the person proposing the same and their disposition; and,

9.2.d. The results of all votes and, upon the request of a member, the vote of each member, by name.

§126-3-10. Severability.

10.1. 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.

**W. Va. 126CSR3, Policy 1241, Notice and Conduct of Meetings
Comment Response Form**

Comment Period Ends: July 15, 2024

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 1241, Notice and Conduct of Meetings. 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.

- | | | | |
|---|---|--|---|
| <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
§126-3-2.13. Meetings.
§126-3-4.2. Participation in Meetings Using Technology.

Please direct all comments to:

Kelli Talbott, General Counsel
Office of Legal Services
West Virginia Department of Education
Capitol Building 6, Suite 650
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330
E-Mail Address: kelli.talbott@k12.wv.us
Telephone No.: 304.558.3667.