

**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

Form #5

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2009 SEP 11 AM 8:35

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 §§18-2-5,
18-2A-1, and 18-2A-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 _____

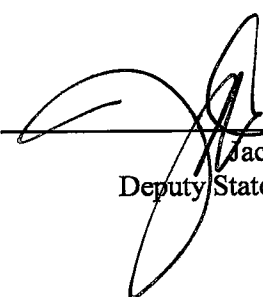
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: "Textbook" Adoption: Notice, Request, and
Instructions to Publishers (2445.41)

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 October 13, 2009.



Jack McClanahan
Deputy State Superintendent of Schools

EXECUTIVE SUMMARY

WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title: Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers

Background: West Virginia Code §18-2A provides for the adoption of instructional materials classified into groups by subject area and grade level. It allows for the creation of an adoption schedule. The resulting policy is 2445.40, Groupings for Textbook Adoption. This policy, 2445.41, provides the bidding instructions and guidelines for vendors to use in order to bid products to meet the requirements set forth in WVBE Policy 2510.

A group of stakeholders held a series of face-to-face and electronic meetings to discuss and develop recommended policy changes. A list of those who participated in the discussions is attached.

Proposals:

§126-36-3. Definition.

- Revisions are being proposed to clarify the definition of "Textbooks," including books, instructional materials and learning technologies, to allow for a better understanding of what publishers may submit as a bid during an adoption cycle.
- Proposed revisions address both print-based and electronic textbooks. Some terms are applicable only to print-based textbooks while other terms are only applicable to materials in electronic format.
- Revisions are being proposed to include a definition of a prime vendor. Currently, there is no definition for what constitutes as a prime vendor.
- Revisions are being proposed to include a definition of "Interactive." Currently, there is no definition for what constitutes interactive.

§126-36-4. Applicability

- Revisions are being proposed to allow for updated materials to be substituted using language that applies to both print and non-print materials.
- Revisions are being proposed to include a requirement that publishers provide Lexile and Quantile Measures for materials approved as primary.

§126-36-5. Guidelines.

- Revisions are being proposed to limit bid details that are released to the public until the multiple list has been approved by the State Board of Education. This is a safeguard against a company lowering a price after seeing competitors' bids under the guise of

Most Favored Nation.

- Revisions are being proposed to add language that defines and clarifies volume discount and standard prices. The new language is user-friendly and is applicable to publishers of print and/or non-printed materials.
- Revisions are being proposed to allow for a teacher's edition to be provided in digital format when the student edition is in digital or electronic format. A revision is being proposed to change the term "regular teacher" to teacher so that all teachers are eligible to receive a teacher edition at no cost, thereby accommodating collaborative teaching environments.
- Revisions are being proposed that defines the period of time in which instructional materials submitted for bid may be given away.
- Revisions are being proposed to add language to clarify the difference in printed and non-printed materials with regard to direct shipment of materials and the use of the state depository. It allows for online delivery to occur.
- Revisions are being proposed to add language that defines permission statements for non-printed materials. This provides clarification to publishers of non-print materials.
- Revisions are being proposed to require the inclusion of an interactive version of all print based textbooks.

§126-36-6. West Virginia Instructional Materials Review Committee Requirements.

- Revisions are being proposed to add language allowing the Instructional Materials Review Committee to reserve the right to review items bid as supplemental materials and remove them if they are deemed inadequate or inappropriate. Previously, no supplemental materials were reviewed during the adoption cycle.

§126-36-7. State Requirements.

- Revisions are being proposed to clearly define learning warranty issues of textbooks, instructional materials and learning technologies. This section of policy was previously written in a manner that did not properly address digital resources. The revisions clarify language in policy.
- Revisions are being proposed to clarify requirements for the review of electronic materials submitted for bid.
- Revisions are being proposed to clearly define what technology hardware may be included in a bid.

§126-36-9. Services to Counties and Schools.

- Revisions are being proposed to clearly define the limitations of publishers with regard to making contact with school system employees during an adoption cycle. In addition, language is added to communicate consequences of such violation.

§126-36-10. Explanation of Bid Items (Attached).

- Revisions are being proposed to add language that clarifies the online bid process. Previously, bids were mailed in paper format to WVDE. With a new online bid process, language needs to be updated to reflect this process.
- Other revisions are being proposed to fix mechanical or grammatical errors in policy.

Impact: By defining textbooks, instructional materials and learning technologies; policy is more user-friendly to publishers of both printed and non-printed materials. Previously, the definition of textbook was very limiting to the reader. By separating the definition of textbook into three separate definitions; it makes it very clear what is considered an acceptable material for the “textbook” adoption cycle. In addition, throughout the policy, additions were made to include language and guidelines for non-print materials to encourage publishers of digital content to submit a bid during the textbook adoption cycle. By adding clarifying language pertaining to print and non-print materials; publishers will be able to follow procedures appropriate to the type of material they bid.

By inserting language that allows WVDE to review and remove supplemental materials from the Multiple List of Instructional Materials, it provides WVDE the opportunity and authority to monitor supplemental programs that are deemed inappropriate or inadequate.

By clearly stating the limitations established in policy regarding contact with any school system employee during an adoption year, WVDE can ensure that equitable opportunities exist for counties and schools.

Response to Comments: One comment from a teacher was received and addressed which resulted in minor editorial changes to Policy 2445.41.

FILED

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

2009 SEP 11 AM 8:35

OFFICE OF THE VIRGINIA
SECRETARY OF STATE

**SERIES 36
"TEXTBOOK" ADOPTION: NOTICE, REQUEST,
AND INSTRUCTIONS TO PUBLISHERS (2445.41)**

§126-36-1. General.

1.1. Scope. - This legislative rule establishes the procedures for notifying publishers of upcoming adoptions of textbooks including books (print and/or interactive), instructional materials and learning technologies by groupings and gives instructions for submitting bids.

1.2. Authority. - W. Va. Constitution, Article XII, §2 and W. Va. Code §§18-2-5, 18-2A-1 and 18-2A-2.

1.3. Filing Date. - September 11, 2009

1.4. Effective Date. - October 13, 2009

1.5. Repeal of former rule. This legislative rule amends W. Va. 126CSR36, West Virginia Board of Education Policy 2445.41, "Textbook" Adoption: Notice, Request, and Instructions to Publishers (hereinafter Policy 2445.41) filed December 13, 2007 and effective January 14, 2008.

1.6. Summary of policy/legislative/procedural rule. This policy notifies publishers of the requirements for submitting bids for adoption of textbooks including books (print and/or interactive), instructional materials and learning technologies by groupings for required school subjects. Dates and adoption groups vary by year, see W. Va. 126CSR35, West Virginia Board of Education (hereinafter WVBE) Policy 2445.40, Groupings for Textbook Adoption for Early Childhood Education, Middle Childhood Education, and Adolescent Education (hereinafter Policy 2445.40). Procedures are given that publishers must follow in submitting bids for the adoption of textbooks including books (print and/or interactive), instructional materials and learning technologies.

§126-36-2. Purpose.

2.1. In accordance with W. Va. Code §18-2A-2, all vendors of new/revised textbooks including books (print and/or interactive), instructional materials and learning technologies are requested by the WVBE to submit official samples and related instructional materials to members of the West Virginia Instructional Materials Review Committee, as provided by action of the said Board in Appendix A of Policy 2445.40.

2.1.1. The notices, requests and instructions set forth herein apply to each program area for each adoption cycle as specified in Appendix A of Policy 2445.40.

2.2. Vendors shall provide to West Virginia schools and counties any financial benefit in the highest amount that has been made available to any other school unit, dealer, county, or depository in any other state. This applies to all services, materials, and equipment as well as loaned or free items for the delivery of any component in the instructional program. (See Section 5.3 Wholesale and Retail /Volume Discount and Standards Prices.)

§126-36-3. Definition.

3.1. The definition "Textbooks" includes books (print and/or interactive), instructional materials, learning technologies, and other materials as defined in W. Va. Code §18-2A-1.

3.2. "Instructional Materials" includes, but is not limited to, systems of instructional materials, or combinations of books (print and/or interactive) and supplementary materials which convey information to the pupil.

3.3. Learning Technologies," includes, but is not limited to, applications using computer software, computer assisted instruction, and other computer courseware and magnetic media.

3.4. "Prime Vendor" is one vendor who provides responses to all of the mandatory project components using its own resources and/or resources from other vendors. The contract made with WVBE shall be made only with a prime vendor.

3.5. Free Items - Any teacher resource materials necessary for the delivery of the program, except for the teacher's edition/manual.

3.6. "Interactive Textbooks" are in electronic format and include, but are not limited to, resources that provide users the ability to select, control, manipulate, and/or contribute content to increase the learning experience.

§126-36-4. Applicability

4.1. Textbooks including books (print and/or interactive), instructional materials, learning technologies, or any combination thereof submitted by a prime vendor and adopted on the state multiple list must substantially cover the required content and skills for the subject as approved by the WVBE as a primary source of instruction. Adopted materials must be current and information presented accurately, including that materials may be updated, substituted or otherwise changed and improved to ensure they are current and accurate. Copyright dates of instructional materials being bid must not be more than five years prior to the adoption period.

4.1.1. Publishers shall provide Lexile Measures for student editions of all materials in all content areas approved for use as primary instructional materials. Publishers shall provide Quantile Measures for all student editions approved as primary instructional materials for mathematics and, when applicable, for all student editions approved as primary instructional materials for science courses. Successful vendors shall bear the cost of obtaining Lexile and Quantile Measures.

4.2. W. Va. Code §18-2A-2, provides for the request of samples and prices on items deemed appropriate to teach the curriculum. These items must be usable in the public schools as the primary source to deliver the content standards and objectives that have been further refined into generic and specific criteria for the respective subject. Bond requirements for these materials shall be \$10,000.00.

4.3. Supplementary and ancillary materials that are *not* a required part of the instructional program may be bid under the category of "Other Instructional Materials" without review by the West Virginia Instructional Materials Review Committee. Bond requirements for these supporting supplementary and ancillary materials shall be \$2,000.00.

§126-36-5. Guidelines.

5.1. Bids and Bid Deposit - All vendors are requested by the WVBE to submit signed sealed bids and electronic bids on the subjects set forth for an adoption period as specified in Appendix A of Policy 2445.40 beginning on July 1 and ending on June 30 at the conclusion of the period. Each bidder shall, on or before the closing date for receiving of bids, have deposited with the Coordinator, Instructional Materials, West Virginia Department of Education, 1900 Kanawha Boulevard East, Capitol Building 6, Room 608, Charleston, WV 25305-0330, a certified check in the sum of One Thousand Dollars (\$1,000.00) payable to the West Virginia Department of Education (hereinafter WVDE). Such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as is required by law in case of acceptance of all or part of the vendor's bid, and otherwise, reimbursement shall be returned to such bidder after the contract has been made. The bids so submitted shall be prepared in a format as made available on the WVDE website at <http://wvde.state.wv.us/materials>, signed, enclosed in a sealed envelope and have designated thereon "Instructional Materials Bid." The bids are to be in the hands of the State Superintendent of Schools on or before 12 noon, on a date in April of the adoption year as set annually by the Coordinator of Instructional Materials and listed in the bid packet and on the WVDE website at <http://wvde.state.wv.us/materials>. All bids will be opened in public in a designated room at the WVDE at 10:00 a.m. on a date in April of the adoption year as set annually by the Coordinator of Instructional Materials and listed in the bid packet and on the WVDE website at <http://wvde.state.wv.us/materials>.

5.1.1. A list of publishers/vendors who submit bids shall be made public. The details of such bids shall be released upon WVBE approval of the state multiple listing.

5.2. Free and/or Loaned Items - Each vendor shall declare on the bid any/all free and loaned items that will be given to any county or school free of charge upon adoption/purchase. Only teachers' editions identified in Section 5.5 may be both bid and/or given to any county or school free of charge. No changes will be permitted after the vendor hearing date and the declaration shall become part of the contract for the adoption period. Substitutions of revised editions shall not alter the original declaration. (See Sections 2 and 5.) Wholesale prices for all ancillary materials, listed free the first year of adoption, will be set, for subsequent years, as of the day of approval by the WVBE. This applies to all vendors, including those using the waiver process.

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5.2.1. All items to be loaned or given free, supplementary or otherwise, shall be provided during the review/hearing period for committee members to observe if requested by the Advisory Committee.

5.3. Wholesale and Retail/Volume Discount and Standards Prices - All prices on the bid shall be firm and must be bonded for the period of adoption. (See Section 2. for financial benefits to schools and counties and Section 5.10 for Substituting Revised Editions.)

5.3.1. Volume Discount and Standard Prices – Anticipated updates and price changes must be included in the original bid. Bids may include per-student, per-computer or other unit price structures. Bids may include subscription price models, such as for web-delivered materials where the cost may be divided over multiple years and paid annually (as opposed to a single payment).

5.4. Exchange Privilege - Vendors shall arrange for the exchange of items, allowing pupils or boards of education an exchange price as liberal as granted on the same items to any county, school, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year, either during the initial purchase year of the adopted materials or the year following the end of the adoption period. If the exchange privilege is granted during the initial purchase year, the lowest net wholesale price shall further be reduced by the amount of exchange.

5.5. Teachers' Editions - Publishers/vendors are required to provide teacher's editions/manuals and/or Teachers Resource Binders (hereinafter TRB) which contain the teacher's edition/manual/curriculum, etc. for counties adopting and purchasing instructional materials at the ratio of one per classroom at the early and middle childhood levels and one per teacher with a minimum of 25 student editions purchased at the adolescent level. Counties, schools, and teachers requesting teachers' editions in excess of this requirement should pay the current bid price. Electronic teacher's editions may be supplied, in lieu of print versions, when digital or online versions of learning technologies or other digital or online instructional materials are adopted.

5.5.1. Any/all item(s) submitted for bid shall not be given away during the period of time beginning with the call for instructional materials and ending at the conclusion of the contract period, except for those items defined in Section 7.

5.5.2. Teachers' editions/manuals and/or TRBs which contain the teacher's edition/manual/curriculum, etc. must be included in the bid for county needs beyond those which are required. The vendor grants each school duplication rights for classroom use only within the limitation(s) of current copyright laws.

5.6. Permission Statements - Successful vendors of student print materials will be required to file permission statements with the National Instructional Materials Accessibility Center (NIMAC), located at the American Printing House for the Blind in Louisville, Kentucky within 30 days of adoption by the WVBE. The permission statement shall provide for translating adopted materials into Braille, Large Type Editions, audio-recordings, etc. to enable students with disabilities to have usable instructional materials on the opening day of school. The files shall be provided in the

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National Instructional Materials Accessibility Standard format (NIMAS) for all materials produced after August 18, 2006.

5.6.1. Accessibility Statements – Successful vendors of student non-print materials shall meet student accessibility guidelines. All content must adhere to current W3C guidelines and be Section 508 conformant. All web content must follow the current Web Accessibility Guidelines (WCAG).

5.7. Rejection of Bids and/or Free Items - The WVBE reserves the right to reject any and all bids or any part of a bid or free item and to accept any part of a bid or free item submitted hereunder.

5.8. Direct Shipment - Vendors may ship directly to a county school district, school(s), or dealer appointed by the county, if the county school district or school(s) selects to purchase from a vendor. However, except in the case of learning technologies or other digital or online instructional materials, vendors shall make items available to a state approved depository when a county school district or school(s) selects to purchase from a depository. Direct shipment to a county school district, school(s), or county dealers shall require the vendor to bear the costs of shipping, mailing, or transporting, including any other benefit provided to any other county or school in any other state.

5.9. Depository(ies) – County school districts and schools have the option to purchase through a depository at the bid price. Except in the case of learning technologies or other digital or online instructional materials, vendors will make their product(s) available for distribution through any WVBE approved depository(ies) that is (are) determined to be qualified to warehouse, manage, and distribute such product(s).

5.9.1. Vendors opting to ship materials through any WVBE approved depository(ies) shall assure that the lowest net wholesale, retail, and exchange prices to county school districts/dealers/schools will not exceed the bid price(s). Shipping costs and/or transportation to county school districts/schools/dealers shall be provided without charge and borne by agreement between the vendor and state approved depository(ies).

5.10. Substituting Revised Editions of Adopted Materials - As stated in Section 5.3, items must be bonded for the period of adoption (not to exceed eight years). Revised editions of previously adopted materials may be substituted at contract prices. Requests must be filed by February 1 or August 1 of each year.

5.11. Contract Price – Beginning the first day of the contract period, the Publisher agrees to supply the public schools of the State of West Virginia with the specific instructional materials at the contract prices hereinafter stated for said instructional materials delivered to the purchaser either directly from the publisher or from the state approved depository. Contractor agrees to: (a) furnish and make available for sale at all times throughout the terms of this agreement, sufficient quantities of the adopted instructional materials to supply the needs of the districts, and (b) pay a delay of delivery charge at the rate of one percent (1%) per day of the undelivered portion of the purchase order that includes major tools, teacher's editions, and any ancillary items included in the contract, if the Contractor fails to deliver within 45 days of the date the purchase order was received by either

the publisher or the state approved depository. For those ancillary items that do not have an initial purchase price, the liquidated damages will be assessed based on the replacement value for that item.

5.12. Items Not Manufactured On Time - Alternative programs and new programs that were not manufactured by the close of the committee's formal evaluation shall be considered through the waiver process by county school districts and schools desiring to use same and shall be sold at the lowest net wholesale price in the nation on the date of purchase. Any vendor whose programs/materials are being initially considered through the waiver process, have not gone through the adoption process, and are not on the multiple list will have to follow the same bid guidelines and policies as required by those who went through the regular adoption process. All costs associated with a review and adoption of materials submitted through the waiver process will be at the vendors' expense.

5.13. Special Rule to Update Adoptions - In order to acquire the latest materials, galley proofs will be accepted by the WVBE by June 1 of the adoption year to assure the content of the program. This special rule carries the requirements that the items will be manufactured 1) prior to August 1 of the adoption year as well as available to schools by July 1 of the implementation year and 2) according to specifications for the respective item. In the event no manufacturing specification exists for the item, the vendor shall attach a warranty statement to the bid guaranteeing durability for the adoption period.

5.13.1. Vendors are advised that the WVBE reserves the option to readopt or acquire new materials.

5.14. Warranty/Replacement - All textbooks, instructional materials, and learning technology software/courseware items (excluding abuse and consumables) shall be durable for the adoption period. Replacement will be without cost for year one through three and pro-rated for the remaining period.

5.15. Required Format – Successful vendors shall provide an interactive version of their print textbooks in electronic format as an option for adoption beginning with the Group V adoption year 2012.

§126-36-6. West Virginia Instructional Materials Review Committee Requirements.

6.1. Reviews and Recommendations - The West Virginia Instructional Materials Review Committee reviews and recommends textbooks including books (print and/or interactive), instructional materials, and learning technologies used as the primary source to deliver the content standards and objectives. The committee reserves the right to list the items as high or low ability and to request the revision of any bid during the hearing with the respective vendor. In addition, the committee reserves the right to review items bid as supplemental materials during the adoption cycle, and thereby reserves the right to remove them from the state multiple list should they be deemed inadequate or inappropriate.

6.2. Generic and Specific Criteria - Generic and specific evaluation criteria for the current

adoption program(s) shall be furnished to each bidder electronically. Vendors are required to provide criteria correlation sheets, in paper format for printed materials and electronic format for non-print materials, including specific locations for each criterion, to the West Virginia Instructional Materials Review Committee prior to June 10 of the adoption year. Failing to do so could result in a disqualification of product. If the materials do not address required specific criteria, this must be noted on the form as a "No." These documents shall be used to evaluate instructional materials that will be considered by the West Virginia Instructional Materials Review Committee and Advisory Committee for recommendation to the WVBE and by county boards of education local selection committees in their selection process.

6.3. Examination Samples - The samples shall be submitted to designated committee members on or before June 10 of the adoption year for examination and study and are to be an exact duplicate of the "Official Bid" filed with the State Superintendent of Schools for West Virginia and clearly marked as to "Grade Levels" (Early and/or Middle Childhood) and "Course Titles" (Adolescent). For clarification, samples must bear a label stating the subject matter for which it is bid e.g., English Language Arts Composition K-12. Vendors/Publishers will provide designated committee members an inventory of shipments (samples) under separate mailing.

6.3.1. Vendors are requested to advise designated members of the West Virginia Instructional Materials Review Committee (by letter, with criteria, and prior to July 10 of the adoption year of their intent to recall (at vendors' expense) any/all samples upon completion of the examination. It is further recommended that, where possible, all instructional materials submitted as a series be forwarded to designated committee members in one mailing.

§126-36-7. State Requirements.

7.1. Official Samples – The West Virginia Department of Education reserves the right to request an official state sample (to be reviewed by the West Virginia Board of Education) at any time during the contract period, not to exceed eight years. If requested, the mailing cartons shall be marked "Official Copy." Each sample item must be marked "Official Copy." Each vendor shall designate the "SUBJECT" and "COURSE TITLES" or "GRADE LEVEL(S)" on the outside front cover of each sample. All samples submitted for bid shall meet the manufacturing specifications for the particular item.

7.2. Warranty of Textbooks, Instructional Materials and Learning Technologies – Vendors shall comply with warranty requirements as noted in Section 5.14.

7.2.1. Textbooks - Vendors shall mail a Form B Warranty for each instructional material to the Coordinator of Instructional Materials. Soft covers are generally prohibited above grade 2, unless the hardcover edition accompanies the soft cover edition to give counties a selection option. (Conditions as noted in Section 5.13 must be followed.)

7.2.2. Instructional Materials - Instructional materials (systems of), or combinations of books and supplementary materials, shall meet the warranty/replacement requirements (Section 5.13). (Form M Warranty must be mailed to the Coordinator of Instructional Materials. Form M Warranty

is included in the MSST book which is available through the Advisory Commission on Textbook Specifications.)

7.2.3. Learning Technologies - Learning technologies shall meet the warranty/replacement requirements (Section 5.13) with exceptions for justifiable circumstances. For example, if a vendor bids a DVD player as part of the solution package, and the normal warranty on the equipment is less than six years, it must be noted. In the case of learning technologies, it shall be sufficient for vendors to provide access via a web-hosted online format and password; vendors shall not be required to provide computer hardware.

7.3. Learning technology vendors may not bid the appropriate hardware needed for utilization of the curriculum solution, unless the instructional content is not technically designed to be, or cannot easily or cost effectively be, separated from such device.

7.4. The vendor must provide the necessary equipment and associated peripherals (see conditions noted in Section 7.3) with the curriculum material for committee members to have adequate time to review product. In the case of learning technologies, it shall be sufficient for vendors to provide access via a web-hosted online format and password; vendors shall not be required to provide computer hardware; however, if such hardware is provided by the vendor, it shall be provided for the duration of the review only.

7.4.1. Vendors must make technology materials and equipment operational during the entire review process including presentations, deliberations, and/or appeals.

7.4.2. When a vendor is completing the Generic and Specific Criteria forms, the following mandatory procedures must be met. Failing to do so could result in disqualification of product.

a. The vendor must reference where the Generic and Specific Criteria are found.

b. References must be given in the following manner on the Specific Criteria forms:

A. For printed text materials, reference page number, paragraph, etc.

B. For multimedia material, reference exact chapters, frame numbers or time sequences, or provide some other specific digital navigation point such as a URL, and provide step by step "flow chart type" instructions for starting and utilizing the accompanying software, CD-ROM, and/or any other component or material that is necessary to locate the criteria covered addressed.

C. The same types of appropriate locations (as above in item "B") must also be noted for other software or courseware.

c. If the material does not address the Specific Criteria, this must also be noted on the forms as a "No."

d. Completed Generic and Specific Criteria forms for primary source materials and the "Instructional Materials Product Inventory" must be sent to the committee members for the review samples. These criteria and inventories are to be sent under separate cover.

7.5. Liability - The State of West Virginia shall not be liable in any sum on account of any contract made in pursuance of the provisions hereof.

§126-36-8. Multiple List and Contract Information.

8.1. The selections and approval of the multiple list of the applicable Group as specified in Appendix A of Policy 2445.40 shall be made by the WVBE. Within thirty (30) days following publication of the Official State Multiple List, proper contracts shall be executed with the vendors of the selected instructional materials for a period prescribed by the WVBE in accordance with the provisions of W. Va. Code §18-2A-1, unless the law relating hereto during such period be altered, repealed, or amended.

8.2. The Official State Multiple List is scheduled to be forwarded to county boards of education by December of each adoption year.

§126-36-9. Services to Counties and Schools.

9.1. Vendors, dealers, agents and/or depositories shall promptly fill all orders of instructional materials by delivering, within ten days after the receipt of orders, to a common carrier at the point or points of shipment; shall on or before August 1 of each school year sell and cause to be delivered to the dealers, depositories, and/or county boards of education a sufficient number of instructional materials to supply the demand, and any failure or neglect to provide such instructional material at such time and place may cause the forfeiture of the contract. Furthermore, proper and adequate service shall be provided to assist state and local school authorities in making known to teachers and principals the philosophy, use, and best instructional methods and techniques. Vendors shall provide staff development activities to enable teachers to use approved instructional materials effectively and efficiently.

9.2. Publishers, vendors, agents, and/or their representatives/affiliates shall refrain from contacting any employee of a West Virginia county school system, any member of a county board of education, and/or any group or individual who may have influence over the adoption of instructional materials to discuss items that are or may be on that company's official bid submission for that adoption cycle. This blackout period will begin on the date the West Virginia Call for Materials is issued and will end on the day after the WVBE approves the Official State Multiple List of Instructional Materials.

9.3. Failure to comply with policy requirements may result in disqualification from the current adoption year and subsequent removal of any/all products from the Official State Multiple List of Instructional Materials.

§126-36-10. Explanation of Bid Items.

126CSR36

10.1. International Standard Book Number (hereinafter ISBN) - Vendors are directed to list on the bid the complete and exact ISBN, including the digits and all hyphens or spaces, as it appears on the "Official Copy," except in the case of learning technologies that may not have an ISBN, in which case some other unique legal identification shall be used. Items without ISBN's shall be identified by the order number.

10.2. Program Designations - For the convenience of the WVBE the bids submitted hereunder shall be clearly designated by the applicable GROUP, PERIOD OF ADOPTION, SUBJECT and GRADE LEVEL and/or COURSE. Prices for the respective program(s) shall be set up in columns as herein designated:

10.2.1. COLUMN 1: Lowest net wholesale price. (See Section 2.1.)

a. Definition: Such price is that which is stated in the bid and will be sold to county schools and/or county school units, the approved depository(ies) and/or the responsible dealers.

10.2.2. COLUMN 2: The retail price to patrons (parents).

a. Definition: Such price is the net wholesale price in Column 1 plus a sum not to exceed a fifteen percent (15%) allowable increase to local dealers.

10.2.3. COLUMN 3: Lowest net exchange price. (See Section 5.4 for exchange information.)

a. Definition: Such price is the lowest net exchange price a vendor will allow any county schools and/or county school units, depository(ies), and/ or responsible dealers, when items correspond in subject, grade level, and in prior legal use in the public schools of West Virginia is returned in exchange.

10.2.4. COLUMN 4: The retail exchange price (see Section 2.1) to patrons (parents).

a. Definition: Such price is the retail price exchanged with the vendor by school patrons (parents) plus a sum not to exceed a ten (10%) percent increase has been added to the net exchange price in Column 3, when items correspond in subject, grade level, and prior legal use in West Virginia.

10.2.5. COLUMN 5: Additional equipment or materials, needed for product utilization (but not on bid). (If curriculum solution bid is to include equipment, see Section 7.4.)

a. Definition: Each vendor shall enter the equipment, materials, and similar items necessary for product utilization that are not specified anywhere on the bid. This will serve as a signal to potential users of possible additional costs necessary for the delivery of instruction.

10.3. Bid Forms: All bids must be submitted electronically on the official WVDE bid site.

126CSR36

Upon completing an online bid submission, a signature sheet including the vendor's authorized signature and a deposit in the form of a certified check in the amount of \$1,000.00 and made payable to WVDE must be mailed to the WVDE, Instructional Materials Coordinator. The bid templates and examples shall be available on the WVDE website at <http://wvde.state.wv.us/materials>. Alternatively, vendors may request that the link to the online bid template be sent to them via email.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: **W.Va. 126CSR35, Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers**

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Education

Address: Capitol Building 6, Room 608

 1900 Kanawha Boulevard, East

 Charleston, WV 25305

Phone Number: 304.558.5325

Email: cljwilli@access.k12.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no impact on costs and revenues of state government by the proposed revisions of W.Va. 126CSR35, Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next 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 & Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: W.Va. 126CSR35, Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers

- 3. Explanation of above estimates (including long-range effect);**
Please include any increase or decrease in fees in your estimated total revenues.

No costs or revenues will be impacted by the proposed revisions of W.Va. 126CSR35, Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

No costs or revenues will be impacted by the proposed revisions of W.Va. 126CSR35, Policy 2445.41, "Textbooks" Adoption: Notice, Request, and Instructions to Publishers.

Signature of Agency Head or Authorized Representative

Date

Blair P. Allen

6-10-09

**Policy 2445.41: "TEXTBOOK" ADOPTION: NOTICE, REQUEST,
AND INSTRUCTIONS TO PUBLISHERS**

Comment Log

July 14, 2009 – August 10, 2009

Action
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted 0 Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
7/15/09	Joseph McBride Chairman-World Languages Department, Woodrow Wilson High School	' 126-##-1. General. 126-36-3 Definition Last sentence of 3.4--Would it be better stated as "The contract with WBE shall be made only with a prime vendor."--The "only" should modify "prime vendor", not "made"	A +	This suggestion was a correction of a misplaced modifier.
7/15/09	Joseph McBride Chairman-World Languages Department, Woodrow Wilson High School	126-36-3 Definition 5.1 The sentence beginning "The bids are to be in the hands of the State Superintendent of Schools on or before 12 p.m. (noon)"--eliminate "p.m." and just say "12:00 noon"	A +	This suggestion eliminates redundancy.
7/15/09	Joseph McBride Chairman-World Languages Department, Woodrow Wilson High	126-36-3 Definition %.1 I suggest revising the sentence beginning "All bids will be opened in a room at the WVE at 10:00 a.m.". I don't believe "a room" is clear enough. As	A +	This suggestion clarifies the type of room in which the bids would be opened.

	School	stated, the bids could be opened in a bathroom. Perhaps add the word "designated" before "room".		
--	--------	--	--	--

Alma Simpson

From: Nobody [nobody@wvde.state.wv.us]
Sent: Wednesday, July 15, 2009 6:33 AM
To: fibanez@wvde.state.wv.us; awsimpso@access.k12.wv.us
Subject: Comment Received for Policy 2445.41 (2009-07-15 06:32:44)

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://129.71.2.32/r.html?id=09cf740af7c36a5ffdb02784b78eea83>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy 2445.41

#####

Name: Joseph McBride
Organization: Woodrow Wilson High School
Email: jmcbride@access.k12.wv.us
Title: Chairman-World Languages Department
Address1: 400 Stanaford Road
Address2:
City/State/Zip: Beckley, WV 25801
Role: Teacher
Posted: 2009-07-15 06:32:44
Posted from IP: 64.181.81.124

Comments for section 126-36-1 General

Comments for section 126-36-2 Purpose

Comments for section 126-36-3 Definition

Last sentence of 3.4---Would it be better stated as "The contract with WVBE shall be made only with a prime vendor."--The "only" should modify "prime vendor", not "made"

Comments for section 126-36-4 Applicability

Comments for section 126-36-5 Guidelines

5.1 The sentence beginning "The bids are to be in the hands of the State Superintendent of Schools on or before 12 p.m. (noon)"--eliminate "p.m." and just say "12:00 noon"

%.1 I suggest revisingthe sentence beginning "All bids will be opened in a room at the WVDE at 10:00 a.m.". I don't believe "a room" is clear enough. As stated, the bids could be opened in a bathroom. Perhaps add the word "designated" before "room".

Comments for section 126-36-6 West Virginia Instructional Materials Review Committee Requirements

Comments for section 126-36-7 State Requirements

Comments for section 126-36-10 Explanation of Bid Items (Attached)
