



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education TITLE-SERIES: 126-188

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

RULE NAME: RESOLUTION OF FORMAL COMPLAINTS
(Policy 7211)

CITE STATUTORY AUTHORITY: W. Va. Constitution, Article XII, § 2 and W. Va. Code §18-2-5

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 12, 2025

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.

**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 188
RESOLUTION OF FORMAL COMPLAINTS (Policy 7211)**

§126-188-1. General.

1.1. Scope. -- This procedural rule establishes a clear and fair process for addressing and resolving formal complaints submitted by members of the public who seek a remedy for a failure to provide elements of a high quality education that resources permit or for violations of any other legal duty. This policy permits members of the public to file formal complaints alleging a school or county is in violation of a provision of West Virginia Code, West Virginia Board of Education (WVBE) policy, the West Virginia Code of State Rules, or the West Virginia Constitution.

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

1.3. Filing Date. -- June 11, 2025.

1.4. Effective Date. -- July 12, 2025.

1.5. Repeal of Former Rule. -- This procedural rule repeals and replaces W. Va. 126CSR188, Policy 7211, Conflict Resolution Process for Citizens (Policy 7211), filed July 11, 2014, and effective August 11, 2014.

§126-188-2. Definitions.

2.1. County superintendent. The superintendent of a county school district, or his or her designee.

2.2. Days. The business days of the office handling the formal complaint at the relevant time. Such offices are generally closed on Saturdays, Sundays, and official holidays as defined by W. Va. Code §18A-5-2.

2.3. Formal complaint. A formal written complaint claiming that a school or county is not complying with State Law.

2.4. State Law. Any provision of West Virginia Code, the West Virginia Code of State Rules, or the West Virginia Constitution.

2.5. School principal. The principal of a public school or public charter school in one of West Virginia's school districts, or his or her designee.

2.6. State Superintendent. The State Superintendent of Schools or his or her designee.

2.7. Written decision. A decision rendered in writing by a school principal, county superintendent, or the State Superintendent resolving a formal complaint.

2.8. WVDE. The West Virginia Department of Education.

§126-188-3. Subject Matter Appropriate for Formal Complaints.

3.1. The formal complaint procedure allows members of the public to seek a remedy for violations of State Law by state, county, or school officials. The formal complaint procedure is not the appropriate process to express disagreement with authorized decisions made by state, county, or school officials, if those decisions fall within the authority of the state, county, or school officials and do not constitute a violation of any State Law. The formal complaint procedure shall not be used for the following matters:

3.1.a. Any situation in which the state, county, or school has no authority to act;

3.1.b. Personnel-related complaints regarding an individual school employee;

3.1.c. Violations of the policies of a county board of education;

3.1.d. Matters within the control of educational institutions other than public K-12 schools and public charter schools, such as non-public schools and institutions of higher education;

3.1.e. Interscholastic activities under the jurisdiction of the West Virginia Secondary School Activities Commission;

3.1.f. Examination of instructional materials as defined in W. Va. Code §18-5-27;

3.1.g. Election-related matters under the jurisdiction of the West Virginia Secretary of State's Office; and

3.1.h. Wage and hour disputes and other public employment matters under the jurisdiction of the West Virginia Public Employees Grievance Board, which provides public employees and employers with a process for resolving employment disputes pursuant to W. Va. Code §6C-2-1.

3.2. Parallel Proceedings. The formal complaint process is not a precondition to seeking relief in some other forum. Members of the public may wish to consider pursuing parallel proceedings in a separate forum for the following matters:

3.2.a. Allegations of criminal conduct, which should be immediately referred to law enforcement agencies as well as school or county officials;

3.2.b. Violations of the West Virginia Governmental Ethics Act, a code of conduct for appointed and elected officials and employees, which is administered and enforced by the West Virginia Ethics Commission;

3.2.c. Fraud, waste, and abuse of state or federal resources, which may be investigated by the West Virginia State Auditor's Office;

3.2.d. Special Education Complaints. Parents and guardians of special education students with concerns about special education rights may file their complaints directly with the WVDE Office of Special

Education. Additional information, forms, and contact information for filing a special education-related complaint are available through the WVDE Office of Special Education Dispute Resolution Process.

3.2.e. Violations of federal law, including but not limited to complaints which fall under Title IX of the Education Amendments of 1972, civil rights complaints, confidentiality of student education records as protected by the Family Educational Rights and Privacy Act (FERPA), and matters falling under the McKinney-Vento Homeless Assistance Act.

3.3. Members of the public are encouraged to make efforts to resolve problems informally with county and school staff. Informal efforts at resolution are not a precondition to filing a formal complaint under this policy.

§126-188-4. School-Level Formal Complaints

4.1. A member of the public may file a formal complaint with a school principal alleging a violation of a State Law. Formal complaints shall be submitted using the school-level complaint form published by the WVDE and available on the school website. The formal complaint shall include all information necessary for the school principal to process the complaint, including but not limited to the complainant's name and contact information, a clear description of the allegation, a specific citation to the State Law at issue, relevant supporting documentation, and any prior steps taken to address the issue.

4.2. The school principal, upon receipt of the formal complaint, shall acknowledge receipt of the formal complaint and advise the complainant of any missing documentation or information. Within five days of receipt of a complete formal complaint, the school principal will hold an informal conference with the complainant in person, by phone, or by videoconference. If the complainant is unavailable to participate in the informal conference at the time proposed by the school principal, or if the complainant does not respond to the school principal's attempt to schedule, the deadline to hold an informal conference will be extended until the complainant agrees to a time proposed by the school principal.

4.3. The school principal shall provide a written decision within 10 days of the informal conference.

4.4. The school principal shall ensure resolutions that adhere to local, state, and federal law and fall within the scope of their authority. If the school principal believes that additional financial or other resources are required to implement a resolution, the school principal shall obtain the approval of the county superintendent before implementing the proposed resolution.

4.5. If the complainant is satisfied with the school principal's written decision, the formal complaint is resolved, and the formal complaint process stops at the school level. A complainant who is not satisfied may proceed to the county-level formal complaint process.

4.6. If the actions of the school principal are the primary subject of the formal complaint, the complainant may file the formal complaint directly with the county superintendent. If the county superintendent, upon reviewing the formal complaint, deems that the formal complaint is appropriate for the school principal to handle, the county superintendent may direct the complainant to file a school-level formal complaint.

§126-188-5. County-Level Formal Complaints.

5.1. Within five days of receiving a school principal's written decision, a complainant not satisfied with the resolution may submit a county-level formal complaint to the county superintendent. Formal complaints submitted to the county superintendent shall be submitted in writing using the county-level complaint form published by the WVDE and available on the county website. The school-level formal complaint, the school principal's written decision, and all related documentation shall be submitted with the county-level complaint form. The complainant may submit additional information to support the claims made by the school-level complaint but may not introduce new allegations. The complainant must elect to have either an informal conference or a formal hearing.

5.2. The county superintendent shall acknowledge receipt of the formal complaint and advise the complainant of any missing documentation or information. The county superintendent may consult with the school principal who issued the school-level written decision to confirm that the documentation submitted by the complainant is complete.

5.3. Within 10 days of receipt of a complete formal complaint, the county superintendent shall hold an informal conference or a formal hearing, as elected by the complainant.

5.3.a. Informal Conferences. An informal conference shall be held in person, by phone conference, or by videoconference, and shall be attended by the complainant, the county superintendent, and any other individuals invited by one of the parties. An informal conference is appropriate for a casual discussion of the formal complaint.

5.3.b. Formal Hearings. A formal conference is appropriate if facts are in dispute. The county superintendent shall act as the hearing examiner and shall make an audio recording of the proceedings. The complainant shall present witnesses to testify under oath under questioning by the complainant. The county superintendent may also question the complainant's witnesses and may take testimony from other individuals with knowledge of the subject matter of the complaint. The hearing examiner shall not strictly apply the rules of evidence and shall favor admitting any relevant material. All documents introduced into evidence will be made a part of the record. The complainant shall have the responsibility of proving all facts to a preponderance standard.

5.4. The county superintendent shall provide a written decision within 10 days following an informal conference or within 20 days following a formal hearing. If a formal hearing was held, the county superintendent shall provide a complete copy of the record of the proceedings, including the audio recording and all exhibits introduced into evidence. If the complainant is satisfied with the resolution, the formal complaint is resolved, and the formal complaint process stops at the county level. A complainant not satisfied with the resolution may proceed to the state-level formal complaint process.

5.5. If the actions of the county superintendent are the primary subject of the formal complaint, the complainant may file the formal complaint directly with the State Superintendent. If the State Superintendent, upon reviewing the formal complaint, deems that the formal complaint is appropriate for the county superintendent or the school principal to handle, the State Superintendent may direct the complainant to file a formal complaint at the appropriate level.

§126-188-6. State-Level Formal Complaints.

6.1. Within 15 days of receiving the county superintendent's written decision, an unsatisfied complainant may submit a state-level formal complaint in writing to the State Superintendent using the

form available on the WVDE website. The complainant shall submit all school-level and county-level formal complaints, written decisions, and related documentation with the state-level complaint form. If a formal hearing was held at the county level, the complainant shall provide the complete record of the proceedings, including the audio recording and any exhibits introduced into evidence. The complainant may submit additional information to support the claims made by the school-level and county-level formal complaints, but may not introduce new allegations.

6.2. The State Superintendent shall acknowledge receipt of the formal complaint and advise the complainant of any missing documentation or information. Upon receipt of a complete formal complaint, the State Superintendent will review the formal complaint and all documentation and may conduct any additional investigation the State Superintendent deems appropriate. The State Superintendent may consult with the county superintendent who issued the county-level written decision to confirm that the documentation submitted by the complainant is complete.

6.3. Within 30 days of receipt of a complete state-level formal complaint, the State Superintendent shall provide a written decision to the complainant. If the formal complaint involves a matter outside the State Superintendent's jurisdiction, the State Superintendent may refer the complaint to the appropriate agency or entity with jurisdiction over the matter.

6.4. The written decision of the State Superintendent shall be final.

6.5. Following a written decision by the State Superintendent, the State Superintendent may implement any of the following corrective actions:

6.5.a. Corrective Action Plan. The State Superintendent may provide the county board with corrective activities and technical assistance to ensure compliance within a given timeline.

6.5.b. Referral for Special Circumstance Review. The State Superintendent may direct the WVDE Office of Accountability to conduct a special circumstance review in accordance with W. Va. Code §18-2E-5 and W. Va. 126CSR188, Policy 2322, West Virginia System of Support and Accountability (Policy 2322).

§126-188-7. Additional Responsibilities.

7.1. School principals, county superintendents, and the State Superintendent shall ensure that all formal complaints are handled in a transparent, timely, professional, respectful, and effective manner, and shall resolve formal complaints fairly and in accordance with applicable rules, laws, and policies.

7.2. The State Superintendent shall prepare and make available forms for filing formal complaints at the school, county, and state levels. Forms and instructions for submitting a state-level formal complaint shall be available on the WVDE website.

7.3. Each school principal and county superintendent shall ensure that copies of this policy and the appropriate complaint forms are provided to the public upon request and published on the county website.

7.4. School principals, county superintendents, and the State Superintendent will maintain records of formal complaints and written decisions for a period of three years.

§126-188-8. Severability.

8.1. 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 in this rule.