

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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APR 13 1 42 PM '98

OFFICE OF 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. Const., Article XII, §2 and W.Va. Code §18-2-5

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 _____

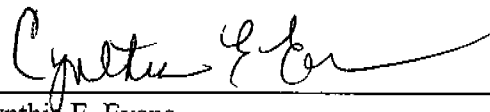
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 66

TITLE OF RULE BEING AMENDED: Tobacco Control (2422.5A)

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 May 13, 1998.



Cynthia E. Evans
Director, Legal Services

\$3.00

EXECUTIVE SUMMARY
WEST VIRGINIA BOARD OF EDUCATION

POLICY NUMBER AND TITLE: Policy 2422.5A
Tobacco Control

PUBLIC COMMENT PERIOD ENDS: May 1, 1998

ADOPTED:

BACKGROUND:

Revisions for Policy 2422.5A, Tobacco Control, adopted October 9, 1997, are necessary to correct a code citation error. The policy states "students under the age of 21 can not possess any tobacco product at any time" and according to W.Va. Code §§16-9A-4, "students under the age of 18 can not possess any tobacco product at any time". The intent of this policy is to prohibit "students" from use and possession of tobacco products, therefore the new revision will not cite code and will state "students" under the age of 21 shall not possess any tobacco products at any time.

PURPOSE:

The purpose of these regulations is to correct the error stated in Policy 2422.5A, adopted October 9, 1997. Changes to the policy are amended in **§126-66-2. Purpose** and **§126-66-3. Application, 3.2.**

FISCAL IMPACT:

Each county board of education and RESA will need to compare its current policy to this policy and make necessary revisions. County school systems may need to discuss enforcement with local law enforcement and magistrate court officials or other community entities as they deem necessary to implement Policy 2422.5A.

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APR 13 1 42 PM '98

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 66
TOBACCO CONTROL (2422.5A)

§126-66-1. General.

1.1. Scope. -- This policy sets the requirement for schools in West Virginia to be tobacco free.

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

1.3. Filing Date. -- April 13, 1998

1.4. Effective Date. -- May 13, 1998

§126-66-2. Purpose.

2.1. The purpose of this policy is to prohibit the use or distribution of tobacco products in school buildings, on school grounds, in school-leased or -owned vehicles, and at all school affiliated functions in order to improve the health of West Virginia students and school personnel. Students under the age of 21 shall not possess any tobacco product at any time. The use of tobacco products has a direct link to numerous health problems and this policy is intended to prevent students, school personnel and visitors from being exposed to secondhand smoke and prevent youth addiction to tobacco products. This policy is intended to promulgate a positive, pro-active approach to tobacco control. In addition, school personnel shall act as positive role models for students by not distributing or using tobacco products.

§126-66-3. Application.

3.1. This policy shall apply at all times to any building, property or vehicle leased, owned or operated by a county board of education, a Regional Education Service Agency (RESA), the State Department of Education or the State Board of Education. This policy shall apply to any private building, or other property including automobiles or other vehicles used for school activities when students or staff are present.

3.2. No person shall distribute or use any tobacco product in any area defined in Section 3.1. of this policy at any time. In addition, students under the age of 21 shall not possess any tobacco product at any time in areas or situations defined in Section 3.1.

3.3. Individuals supervising students off school grounds are prohibited from distributing or using any tobacco product while in the presence of students or any time while engaged in any activities directly involving students.

3.4. No school or board property, as defined in Section 3.1. of this policy, or school, county, RESA or state publication may be used for advertising of any tobacco product.

3.5. Groups using areas described in Section 3.1 shall sign agreements with the county board of education agreeing to comply with this policy and to inform students, parents, and spectators that this policy remains in force on evenings, weekends, and other times that school is not in session.

§126-66-4. Implementation.

4.1. All county boards of education, schools and RESAs must have a tobacco control policy that meets the stipulations of this policy and adheres to the following guidelines by January 1, 1998. A copy of the county policy should be submitted to the Office of Student Services and Assessment in the West Virginia Department of Education for approval.

4.1.1. *Administration:* The tobacco control policy should make reference to:

a. the responsibility of school administration to implement provisions of this policy, specifically education, communication and enforcement provisions;

b. clear procedures for identification, intervention and referral of students with tobacco-related problems; and

c. maintenance of an environment for students, staff and visitors that presents no physical harm, discomfort or unsanitary condition resulting from tobacco product use.

4.1.2. *Communication:* The tobacco control policy must include, at a minimum, procedures for communicating the policy to students, school staff, parents or families, visitors and the community at large. This policy must be communicated through, at a minimum, the following mechanisms:

a. staff development;

b. employee and student handbooks;

c. parent/guardian notification; and

d. general public notification (e.g. signs, announcements)

4.1.3. *Prevention Education*: The tobacco control policy should reference, at a minimum, required K-12 tobacco prevention education as outlined in the following:

- a. State Board of Education Policy 2520, Health Education; and
- b. Safe and Drug-Free Schools guidelines.

4.1.4. *Cessation Support Education*: The tobacco control policy must address how the RESA, county or school plans to:

- a. provide or refer, if available, to voluntary cessation education and support programs which address the physical, psychological and social issues associated with nicotine addiction and provide on-going support and reinforcement necessary for desired behavior change; and

- b. provide information about available programs to all 7-12 grade students and staff on a regular basis.

4.2. *Board Action*: All county boards of education, schools, RESAs and the State Department of Education must develop procedures to assure compliance with the stipulations of this policy. Compliance is mandatory.

4.2.1. Enforcement provisions for students, staff and the public are to be included in policy.

- a. Such action for students may include, but is not limited to: counseling, school/community service, parent guardian notification, mandatory education sessions, police notification, and/or prosecution.

- b. Such action for staff may include, but is not limited to: referral to Employee Assistance Program (EAP), conference with supervisor, and disciplinary actions consistent with county, RESA or State Board of Education personnel policy.

- c. Such action for the public may include, but is not limited to: request to stop use or leave premises, and police notification.

4.2.2. Enforcement measures should be aligned with:

- a. State Board of Education Policy 4373, Student Code of Conduct;
- b. State Board of Education Policy 5310, Personnel Staff Evaluation: Professional Responsibilities and Performance Standards;
- c. State Board of Education Policy 1461, Drug-Free Workplace; and
- d. W.Va. Code §§16-9A-1 through 16-9A-4, Tobacco Usage Restrictions.

4.2.3. In addition, the policy should include referral to law enforcement authorities for appropriate action on violations of W.Va. Code §§16-9A-1 through 16-9A-4 in accordance with measures outlined in individual school, county or RESA policies.

4.3. *Policy Review:* The tobacco control policy should include provisions to review the policy every two years and make appropriate modifications as necessary.

FISCAL NOTE WORKSHEET
(Submit 4 Copies)

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Policy 2520 - Instructional Goals and Objectives for West Virginia Schools FUND _____

SOURCE OF REVENUE: GENERAL FUND SPECIAL OTHER (SPECIFY) _____

COST OF ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

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	\$0.00	\$0.00	\$ 0.00	\$ 0.00	\$0.00
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$ 0.00	\$ 0.00	\$0.00	\$ 0.00	\$0.00
2. ESTIMATED TOTAL REVENUES	\$0.00	\$0.00	\$ 0.00	\$0.00	\$0.00

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

DATE

AGENCY

AUTHORIZED REPRESENTATIVE

October 9, 1997

West Virginia Department of Education

