

**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

2011 SEP -9 PM 3:43

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, W. Va. Code §§18-2-5, 18-5B-1, 18-5B-2, 18-5B-3, 18-5B-4, 18-5B-5, 18-5B-6, 18-5B-7, 18-5B-8, 18-5B-9, 18-5B-10 and 18-5B-11

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: 75

TITLE OF RULE BEING AMENDED: Education Innovation Zones (3236)

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 11, 2011.



Charles K. Heinlein
Deputy State Superintendent of Schools

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title: Policy 3236, Education Innovation Zones

Background: Legislation authorizing the West Virginia Board of Education (WVBE) to designate Education Innovation Zones in schools, groups of schools and departments or subdivisions of a school or schools was entered into statute in October, 2009. The legislation takes into consideration that rules are established in public education to manage the resources efficiently, allot time among the activities and processes required and to ensure attention to the goals mandated. It is also understood that rules may limit the flexibility of professional educators to engage in those activities and implement those approaches that may best improve the learning of their students for the twenty-first century. Therefore, it is believed that allowing individual schools to seek and receive exceptions from certain statutes, policies and rules and interpretations through the creation of school innovation zones will provide them greater control over important educational factors that impact student achievement. Legislation was passed in the regular session of the Legislature in 2011 that created another category of Innovation Zones to be designated as “Local Solution Dropout Prevention and Recovery Innovation Zones”. The intent and purpose of the legislation is as follows: increase graduation rate and reduce number of dropouts, provide a testing ground for innovative graduation programs, incentives, and approaches, provide schools and communities with opportunities for greater collaboration to plan and implement systemic approaches for increasing graduation rate and lessen dropout rate, provide information regarding the effects of specific innovations, collaborations, and policies, and document educational strategies that increase graduation rates, prevent dropouts and enhance student success.

Major Revisions or Reasons for New Policy: Revisions were required to Policy 3236 to incorporate the legislation establishing the “Local Solution Dropout Prevention and Recovery Innovation Zones”.

Impact: WVBE Policy 3236 creates the opportunity for information regarding the effects of specific innovation educational strategies on student achievement and dropout rate and student retention. This policy will provide greater flexibility at innovation zones schools to enable local solutions to improve student achievement, dropout and graduation rate improvement and serve as a testing ground for strategies that can be replicated in other schools in West Virginia.

Response to Comments: No comments were received during the comment period.

Innovation Zones: Policy 3236

External Stakeholders

Cathy Marino
Dale Lee
Dana Waldo
Diane Burnside
Dr. Dee Hopkins
Dr. Ron Duerring
Howard O’Cull
Jackee Long
Cindy Daniels
Rachel Hull
Chuck Hatfield
Ted Mattern
Dr. Lowell Johnson
Lynn Hurt
David Mohr
Hank Hager
Gerry Sawrey
Sandra Duncan
Steve Knighton
Wendy Clutter
Wade Linger

Internal Stakeholders

Michele Blatt
Betty Jo Jordan
Chuck Heinlein
Shelly DeBerry
Nancy Cline
Dr. Amelia Courts
David Price
Heather Deskins

TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION
SERIES 75
EDUCATION INNOVATION ZONES (3236)

2011 SEP -9 PM 3:43

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

§126-75-1. General.

1.1. Scope. -- This legislative rule authorizes the West Virginia Board of Education (hereinafter WVBE) to designate Education Innovation Zones in schools, groups of schools and departments or subdivisions of a school or schools; establishes a plan review, approval and amendment process; authorizes exceptions to certain policies, rules, interpretations and statutes; provides for approval of the Innovation Zone plan by certain employees of a school; provides for revocation of designation and plan approval; requires annual report by the West Virginia Department of Education (hereinafter WVDE); designates the order in which applications must be considered; provides for the voluntary transfer of employees; authorizes teacher job postings that exceed certain qualifications and requirements; and provides that a state institution of higher education may establish a school designated as an Innovation Zone, that such school may not receive certain funds; provides the procedure in which a state institution of higher education may apply for and establish an Innovation Zone school; and provides for the approval mechanism for an Innovation Zone school established by a state institution of higher education by the county board and by the WVBE; establishes a separate category of Innovation Zones known as Local Dropout Prevention and Recovery Innovation Zones; to increase graduation rate and reduce number of dropouts; provide a testing ground for innovative graduation programs, incentives, and approaches; provide schools and communities with opportunities for greater collaboration to plan and implement systemic approaches for increasing graduation rate and lessen dropout rate; provide information regarding the effects of specific innovations, collaborations, and policies; document educational strategies that increase graduation rates, prevent dropouts and enhance student success.

1.2. Authority. -- West Virginia Constitution, Article XII, §2, and W.Va. Code §§18-2-5, 18-5B-1, 18-5B-2, 18-5B-3, 18-5B-4, 18-5B-5, 18-5B-6, 18-5B-7, 18-5B-8, 18-5B-9, 18-5B-10 and 18-5B-11

1.3. Filing Date. -- September 9, 2011

1.4. Effective Date. -- October 11, 2011

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces W. Va. 126CSR75 "Education Innovation Zones" (3236) filed September 24, 2009, and effective October 26, 2009.

§126-75-2. Purpose.

2.1. The purpose of this WVBE policy is to provide guidelines for implementation of education Innovation Zones and Local Dropout Prevention and Recovery Innovation Zones to improve educational performance in a manner that provides greater flexibility from policy and

law for principals and teachers to meet the needs of a diverse population of students. This WVBE policy will create the opportunity for information regarding the effects of specific innovative educational strategies on student achievement, dropout and graduation rates and to provide more public school accountability for student achievement and graduation rates as measured by the state assessment programs, local assessment processes and graduation rate and dropout rate calculations as identified by the schools and the WVDE.

§126-75-3. Eligibility.

3.1. Applicants for an Innovation Zone may include: 1) a school and groups of schools; 2) a group of schools seeking designation across the same subdivision or department of the schools; or 3) a school seeking designation of a subdivision or a department.

3.2. Applicants for a Local Solution Dropout Prevention and Recovery Innovation Zone may include: 1) a high school; 2) a group of schools comprised of a high school and any of the elementary and middle schools whose students will attend the high school; or 3) a school district whose graduation rate in the year in which the application is made is less than ninety percent based upon the latest school year data published by the Department of Education.

3.3. A state institution of higher education may establish a new Innovation Zone school subject to the regulations provided in W. Va. Code §18-5B-9.

3.3.a. The school will be under the jurisdiction of the state institution of higher education.

3.3.b. The county board with jurisdiction over the school district in which the new school is planned to be located must approve the establishment of the new Innovation Zone school.

3.3.c. The state institution of higher education must enter into cooperative agreements with the county board or county boards whose students attend the new Innovation Zone school. The agreements shall include at least required reporting on student attendance, academic progress and any other matters relating to the administration, operation and support of the school agreed to by institution and the board or boards.

3.3.d. Students attending the school shall be enrolled in a school in their county of residence subject to the policies of the county. The students may participate in extracurricular and co-curricular activities at the county school in which they are enrolled and, subject to the cooperative agreement with the state institution of higher education, participate in curricular activities at the county school in which they are enrolled.

3.3.e. No funds for school Innovation Zones pursuant to W. Va. Code §18-5B-9 may be used for a state institution of higher education to establish a new Innovation Zone school.

3.3.f. A school established in accordance with this section may not be funded with moneys appropriated by the Legislature to fund the Innovation Zone program or from state or county moneys that result from the school aid formula.

3.3.g. The process, timelines and selection criteria for a state institution of higher education to establish a new Innovation Zone school shall be the same as outlined in this rule for all applicants.

§126-75-4. Application Process.

4.1. Applicants must submit an application and plan outlining their innovation zone focus to WVDE. The application and plan guidelines are available through the WVDE Office of School Improvement.

4.2. Application and plans must follow the established timelines, as well as all regulations indicated in law and policy; secure the necessary support and include all the components outlined in WVDE guidance documents.

4.3. Application and plans must include documentation of approval by eighty percent of the eligible employees affected by the Innovation Zone proposal, in accordance with §126-75-5.

4.4. Application and plans must fully describe the objectives, outcomes, timelines, persons responsible and budget necessary to implement the project design.

4.5. Application and plans must include professional development that supports the planning, implementation, and monitoring of the Innovation Zone.

4.6. The Local Solution Dropout Prevention and Recovery Zone application and plans must include a description of the dropout prevention and recovery strategies planned for implementation and for building community awareness of the high school dropout problem.

4.6.a. The application and plan must provide evidence that various stakeholder groups are involved as partners, collaboratively working with the applicant to increase graduation rates and decrease dropout rates.

4.6.b. The application and plan must include implementation of the statewide system of easily identifiable early warning indicators of students at risk of not completing high school.

4.7. The focus of the application and plan must be supported by data, meeting the specific needs of the student population and an innovative idea that has not been previously funded through this policy.

4.8. The focus of the application and plan may include a request for an exception of any state or county policy, rule, statute, or interpretation except from an assessment program administered by the WVDE; any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; W. Va. Code §§18A-2-7; 18A-4-7A, 18A-4-7B, 18A-4-8 and 18A-4-8B, except as provided in W. Va. Code §18-5B-8 or any other information the WVBE requires.

4.9. The focus should include strategies that fully prepare students at each grade level and encourage students to stay in school, be engaged in the curriculum, and have a plan for entering the workforce, post secondary training or education.

§126-75-5. Rights of Employees.

5.1. An employee regularly employed at a school applying for or designated as an Innovation Zone whose job duties may be affected by implementation of the Innovation Zone or proposed application and plan may request a transfer to another school in the school district and the county board shall make every reasonable effort to accommodate the transfer.

5.2. If the application and plan includes a job posting that exceeds the qualification provided in section seven-a, article four, chapter eighteen-a of W.Va. Code, teachers in the county must approve the job posting by a majority vote in accordance with W. Va. Code §18-5B-8.

5.3. The application and plan shall be approved by eligible employees that are affected by the Innovation Zone plan prior to submission of the plan to the county board of education in accordance with the regulations in W. Va. Code §18-5B-6:

5.3.a. An employee shall be eligible to vote in accordance with the provisions of this section if: 1) The employee is regularly employed at the school; and 2) the employee's primary job duties will be affected by the implementation of the Innovation Zone plan.

5.3.b. A panel consisting of the elected officers of the faculty senate of the school or schools, one representative of the service personnel employed at the school and three parent members appointed by the local school improvement council shall call the meeting required to vote on approval of the Innovation Zone plan.

5.3.c. The panel shall determine which employees are eligible to vote in accordance with the provisions in W. Va. Code §18-5B-6, and shall conduct the votes and certify the results to the principal, the county superintendent and the president of the county board.

5.3.d. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

5.3.e. A secret ballot vote shall be conducted at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section to determine the level of employee commitment for approval of an Innovation Zone plan.

5.3.f. At least eighty percent of the employees who are eligible to vote in accordance with this section must vote to approve the school's Innovation Zone plan.

5.3.g. The application and plan shall be approved by eighty percent vote of the affected school employees and documentation of the same shall be submitted to the county superintendent and board for review.

§126-75-6. Evaluation Criteria/Approval Process.

6.1. Innovation Zones will be determined by Innovation Zone Selection Committee (hereinafter Selection Committee) (§126-75-8) based on submission and approval of the application and plan according to §126-75-4.

6.2. The Selection Committee will evaluate the application and plan based on development of the objectives, outcomes, timelines, persons responsible and budget necessary to implement the project design.

6.3. Grants will be awarded to the approved application and plans. Funding for the grant will be on a pro-rata basis with grants awarded, to the extent practicable, across geographic areas of the state, programmatic levels and in proportion to the number of teachers impacted by the innovation zone.

6.4. The Selection Committee shall recommend to the WVBE those applicants who have a fully developed application and plan for the Innovation Zone/ Local Solution Dropout Prevention and Recovery Zone and have met all requirements in this policy and W. Va. Code §18-5B-6 and §18-5B-11.

6.4.a. If an application and plan is disapproved, the WVDE shall communicate the reasons for the disapproval to the applicant along with recommendations for improving the plan.

6.4.b. The applicant may amend and resubmit the plan to the Selection Committee the following year.

§126-75-7. Progress Reviews/Annual Reports.

7.1. The WVDE shall at least annually review the progress of the Innovation Zone and provide a report to the WVBE and the Legislative Oversight Committee on Education Accountability.

7.2. Following the annual review/report, if the WVDE determines that adequate progress has not been made, a report identifying areas of concern shall be submitted to the Innovation Zone.

7.2.a. The WVDE may conduct an additional review within six months of submitting the report.

7.2.b. Within this review, if the WVDE determines that the Innovation Zone has not made adequate progress, the WVBE may revoke the designation as an Innovation Zone.

§126-75-8. Innovation Zone Selection Committee Membership and Responsibilities.

8.1. The Selection Committee members shall include the following members: two WVBE members selected by the WVBE President, the State Superintendent of Schools and/or designee,

one representative of each state teacher organization, one representative of an institution of higher education that has a state-approved educator preparation program, one county superintendent, one building principal and one teacher selected by the State Superintendent, one representative of a community/business organization jointly selected by the WVBE President and State Superintendent, and WVDE staff as ex-officio/resource persons.

8.2. Members will serve five year terms.

8.3. The Selection Committee shall review plans, including WVDE staff recommendations, based on a review of applications that meet the required criteria.

8.4. The Selection Committee shall recommend applications to the WVBE for approval.

§126-75-9. Severability.

9.1. 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 FOR PROPOSED RULES

Rule Title: Title 126, Series75: Policy 3236, Education Innovation Zones.

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Education

Address: 1900 Kanawha Blvd., East

Building 6, Room 351

Charleston, WV 25305-0330

Phone Number: 304-558-3199 Email: mblatt@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.

This policy will not require expenditure of funds for implementation. It will incur no revenue.

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.

Effect of Proposal	FISCAL YEAR		
	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: Title 126, Series75:Policy 3236, Education Innovation Zones.

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

Neither expenditure of funds nor any revenue will be generated from this rule.

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.

Title 126, Series75: Policy 3236, Education Innovation Zones is being revised to add a new category of Innovation Zones; "Local Solution Dropout Prevention and Recovery Innovation Zones". It will not incur any revenue or require expenditures of local funds than did the original policy.

Signature of Agency Head or Authorized Representative

Chuck Keenlen

Date

7/5/11