

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

FILED

2003 DEC 12 A 10:50

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, W. Va. Code §18-2-5 and §18-4-6

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 _____ NO X

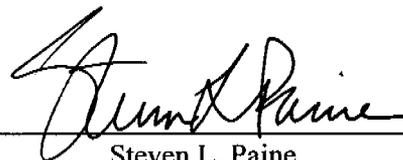
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 143

TITLE OF RULE BEING PROPOSED: County Superintendent Performance
Evaluations (5309)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 11, 2004.



Steven L. Paine
Deputy State Superintendent of Schools

EXECUTIVE SUMMARY
WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy Number and Title:

Policy 5309
County Superintendent Performance Evaluations

Background:

Policy 5309 is a new policy. It was written to implement West Virginia Code §18-4-6. This code section requires the State Board of Education to authorize the process each county board of education uses to evaluate the county superintendent.

Proposals:

Policy 5309 sets forth the minimum requirements that a county board of education must include in its process for evaluating the county superintendent. The policy also sets forth the time frame for submission of the evaluation process to the State Superintendent, who will present each county's evaluation process to the State Board for approval.

Impact:

This policy is designed to ensure that each county board of education develops and utilizes a process for evaluating the county superintendent that complies with state law. The policy also provides submission timelines that will ensure that the evaluation process is approved in a timely manner, giving adequate notice of the evaluation process to the county superintendent.

Response to Comments:

The public comment period for Policy 5309 closed October 24, 2003. Only three comments were received. The comments were generally concerned with clarifying the language of the policy. Minor editorial changes were made in response to the comments. No substantive changes were made.

FILED

2003 DEC 12 A 10: 51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION
SERIES 143

County Superintendent Performance Evaluations (5309)

§126-143-1. General.

1.1. Scope. - This rule governs the approval of processes by which county boards of education annually evaluate the performance of their superintendents.

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

1.3. Filing Date. - December 12, 2003.

1.4. Effective Date. - January 11, 2004.

1.5. Repeal of Form Rule. - None. This is a new rule.

§126-143-2. Purpose.

2.1. W.Va. Code §18-4-6 requires the West Virginia Board of Education (hereinafter State Board) to authorize the processes by which county boards of education (hereinafter county board) shall annually evaluate the performance of their superintendents.

2.2. The purpose of this policy is to prescribe how the State Board will exercise that authority.

§126-143-3. Authorization Required.

3.1. Each county board shall annually evaluate the performance of its superintendent in accordance with a process authorized by the State Board pursuant to this policy.

3.2. A county board shall not evaluate its superintendent under a process that has not been approved by the State Board.

3.3. Nothing in this policy shall be interpreted to require a county board to evaluate an interim superintendent serving pursuant to W.Va. Code §18-4-1.

126CSR143

3.4. During any period that the State Board intervenes in the operation of a school system pursuant to W.Va. Code §18-2E-5, the county board shall not evaluate the superintendent's performance unless directed to do so by the State Superintendent.

§126-143-4. Processes for School Year 2003-2004.

4.1. Before evaluating the performance of its superintendent for the 2003-2004 school year, the county board shall submit to the State Superintendent of Schools (hereinafter State Superintendent) a written description of the evaluation process it proposes to follow including a copy of any evaluation forms to be used as part of the process.

4.2. The State Superintendent, on behalf of the State Board, is authorized to approve the proposed process for the 2003-2004 school year if, in the State Superintendent's reasonable opinion, the proposal satisfies the criteria of section 6 of this policy.

§126-143-5. Processes for Subsequent School Years.

5.1. Before evaluating the performance of its superintendent for the 2004-2005 school year, the county board shall submit to the State Superintendent, for approval by the State Board, a written description of the evaluation process which the county board proposes to follow, including a copy of any evaluation forms to be used as part of the process.

5.2. In order to receive State Board approval by July 1, the county board must initially submit its proposed evaluation process to the State Superintendent before the preceding December 31. Proposals submitted after that date will be considered, but may not be approved by July 1.

5.3. If it appears to the State Superintendent that an evaluation process proposed by the county board does not meet the requirements of section 6 of this policy, the State Superintendent shall return the proposal to the county board, identifying any areas of noncompliance. After revising the proposed process to comply with the requirements of section 6, the county board shall submit to the State Superintendent, for approval by the State Board, a written description of the revised proposal.

5.4. If, in the State Superintendent's opinion, a proposed evaluation process submitted by the county board meets the mandatory requirements of section 6 of this policy, the State Superintendent shall promptly bring the proposal to the State Board for consideration, regardless of the State Superintendent's opinion about other aspects of the county board's proposal. If the State Superintendent is concerned about any aspect of the proposal, the State Superintendent shall so inform the State Board of the concern.

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5.5. If the State Board does not approve a county board's proposed evaluation process, the county board shall revise the proposal to address the State Board's concerns and submit a written description of the revised proposal to the State Superintendent for approval by the State Board.

5.6. Once the State Board approves the county board's process for evaluating the superintendent's performance, the county board shall continue to utilize the approved process until the State Board authorizes or requires the county board to employ a different process.

§126-143-6. Required Process Criteria.

6.1. The process by which the county board of education shall annually evaluate the performance of its superintendent shall include the following criteria:

6.1.1. The process shall require the county board and the superintendent to annually, before September 15, establish written goals or objectives for the superintendent to accomplish within a given period of time. Each goal or objective shall include a specific time line for completion. The time line need not be the same for each goal or objective, and the time line for any goal or objective may extend beyond the end of the then-current school year.

6.1.2. The process shall specify how the goals or objectives will be established when the board and the superintendent seem unable to agree. To that end, the process may provide that the parties will petition the State Board to designate an individual to facilitate agreement on goals or objectives, that the county board will engage the West Virginia School Boards Association and the West Virginia Association of School Administrators to facilitate agreement, or that some other specific procedure will be followed to break the impasse.

6.1.3. The process shall require the county board to annually, before June 30, assess the superintendent's achievement of the written goals or objectives, except that the assessment shall be made before March 1 if the superintendent's contract is to expire on the ensuing June 30.

6.1.4. The process shall require the county board to annually, before June 30, evaluate the superintendent's success in improving student achievement generally across the county and specifically as it relates to the management and administration of low performing schools, except that this evaluation shall be made before March 1 if the superintendent's contract is to expire on the ensuing June 30.

6.1.5. The process shall require the county board to evaluate the superintendent's performance in executive session, and to thereafter make available to the public a general statement about the evaluation process and the overall result. The process shall specify how the county board will arrive at the general statement about the evaluation process and the overall result.

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6.1.6. The process shall allow for the release of additional information about the evaluation only by mutual consent of the superintendent and the county board.

§126-143-7. Optional Process Criteria.

7.1. The process by which the county board shall annually evaluate the performance of its superintendent may include these features:

7.1.1. The process may require or allow the county board to annually, before June 30, assess the superintendent's performance in the areas of community relations, school finance, personnel relations, curricular standards and programs, and overall leadership of the school district as indicated primarily by improvements in student achievement, testing and assessment, except that this assessment shall be made before March 1 if the superintendent's contract is to expire on the ensuing June 30. If the process includes such assessments, the process shall specify how the assessments will be made, including any ratings or rankings that will be employed.

7.1.2. The process may require or allow the county board to assess annually, before June 30, the superintendent's performance of any of the other duties of the chief executive officer of the county board as delineated in the superintendent's contract or other written agreement with the county board [W.Va. Code §18-4-10(1)], and the degree to which the superintendent keeps the county board apprised continuously of any issues that affect the county board or its schools, programs and initiatives. [W.Va. Code §18-4-10(9).]

7.1.3. The process may, with the consent of the superintendent who is to be evaluated, incorporate input from other parties, such as citizens and school employees, about the superintendent's performance. However, any such input shall be used only to inform the county board in its evaluation of the superintendent.

§126-143-8. Catalog of Evaluation Instruments.

8.1. The West Virginia School Boards Association shall maintain a catalog of evaluation instruments which comply with this policy and shall make them available to county boards.

§126-143-9. Use of Evaluation Results.

9.1. A county board may use the results of its evaluation of the superintendent's performance to determine whether to offer the superintendent a new contract and the level of compensation or benefits to offer the superintendent in any new contract.

126CSR143

§126-143-10. Evaluation Training.

10.1. As an integral part of the process for evaluating the performance of superintendents for the 2004-2005 school year and subsequent school years, all county board members and superintendents shall receive evaluation training approved by the State Board and conducted jointly by the West Virginia School Boards Association and the West Virginia Association of School Administrators.

§126-143-11. Severability.

11.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.

FISCAL NOTE WORKSHEET

(Submit 4 Copies)

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

SUBJECT Policy 5309: County Superintendent Performance Evaluations 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 97-98	THEREAFTER
1. ESTIMATED TOTAL COST	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$
2. ESTIMATED TOTAL REVENUES	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -	\$ - 0 -

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

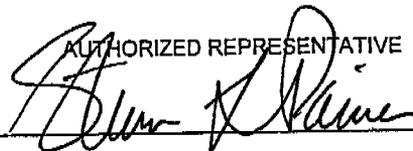
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

August 28, 2003

West Virginia Department of Education



**POLICY 5309: COUNTY SUPERINTENDENT PERFORMANCE EVALUATIONS
COMMENT LOG
OCTOBER 24, 2003**

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

Date	Individual/Organization	Comments	Action/Type	Rationale
		§126-143-1. General		
10/20/03	Gary Adkins/Wayne County BOE	What happened to SATISFACTORY OR UNSATISFACTORY as discussed at the Superintendent's conference held in June at Glade Springs?????	N-O	
10/21/03	Robert Harris/Wood County BOE	1.1 This rule also provides the process as well as the approval process. Other: When will new policy to accompany §18-5-1c Organization of Board- evaluation be put out for comment	N-O	
10/22/03	Howard O'Cull/WV/SBA	As a general comment, a county superintendent said he preferred "an annotated evaluation rather than (board members' aggregated) ratings." He adds, "At any rate, I would like the assurance that the board evaluation be as 'one.' This is how the board conducts all other business, and it should be no different in the superintendent's evaluation."	N-O	

§126-143-2. Purpose

§126-143-3. Authorization Required

10/21/03	Robert Harris/Wood County BOE	3.2 Isn't this redundant? A negative of 3.1 3.4 Remove "to do so" from last sentence.	N-O	Sentence Restructured
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§126-143-4. Process for School Year 2003-2004

10/21/03	Robert Harris/Wood County BOE	Is this date right? Should it not be 2003-2004? 4.1 Make the paragraph two sentences instead of one: 4.1 Before evaluating the performance of its superintendent for the 2003-2004 school year, the county board shall submit to the State Superintendent a written description of the evaluation process it proposes to follow. Copies of any evaluation forms to be used are to be included. 4.2 This is confusing at first. The proposed process for the 2003-2004 year, it satisfying the criteria of section 6,	A-+ N-O N-O N-O	Change Made Restructured
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		is in fact the county submitted process after review.		
10/22/03	Howard O'Cull/WVSBA	<p>Process for the School Year 2004-2005. As developed by the Senate Bill 522 Implementation Committee, which was convened by WVSBA following the Legislature's enactment of this legislation, the intent of this section was to allow county boards, prior to the policy being effective, to use existing county superintendent evaluation forms, or forms that may be available from the W.Va School Boards Association and other sources. If this process is followed, the heading should read, "Process for School Year 2003-2004." Also, a change should be made in 4.2. for purposes of parallel. Dr. Stewart is forwarding a letter to counties saying, for FY04, existing superintendent evaluation forms may be used.</p>	N-O	
§126-143-5. Processes for Subsequent School Years				
10/21/03	Robert Harris/Wood County BOE	<p>5.1 Whoa! Please rewrite using more sentences.</p> <p>5.2 Just state it here. Submit by December 31. Approval granted by July 1. If not, no policy. School boards can</p>	A-O NA/O	Sentence Restructured

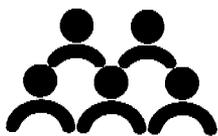
		still not renew contracts, even with no policy. Right? Then what happens, the county board is taken over by the state board?		
		5.3 Needs English teacher review. "After revising the proposed process to comply with the <u>"areas of noncompliance identified by the State Superintendent"</u> .	N-O	
		5.4 "... promptly bring the proposal to the State Board ..." should be rewritten - why not "quickly take"?	N-O	
		5.5 Rewrite - two many phrases	A-O	Sentence Restructured
		5.6 The county should have the right to revise it's own process and resubmit for State Superintendent approval. "... the county board shall thereafter utilize that process ..." should be changed.	A-O	Restructured
		§126-143-6. Required Process Criteria.		
10/21/03	Robert Harris/Wood County BOE	6.1.1 §18-4-6 requires the county superintendent and board to establish written goals - In 6.1.2 the term mutually agreeable, which should be agreed is used. Make them consistent. The Board still can fail to renew the superintendents contract with or without	N-O	

	<p>mutually agreed goals?</p> <p>Time lines can extend beyond the current school year. Does the binding time need to be stated in the goals or can the Board alter at any time?</p> <p>6.1.2 The term agreeable should be agreed. Make 6.1.1 and 6.1.2 agree which makes these criteria more agreeable to many.</p> <p>Why is the WV Board of Education suggesting the name of an association or organization regarding helping the Superintendent and Board of Education through an impasse? Should a state policy based on criteria created in law state name an association to do this? What about law firms? Instead of stating a name, why not make it the state board will designate who will help with the impasse, when petitioned and leave it at that. The state board then can designate whomever they wish.</p> <p>6.1.3. Why written this way? Give reason for specific dates. Not always understood.</p> <p>6.1.4 Make this as a part of 6.1.3.</p>	A-O	Restructured
		NAV-	
		N-O	
		N-O	

		<p>6.1.5 Are you evaluating the superintendent's performance in every area of the attainment of the written goals? He can attain 95% of the goals and yet the performance can be viewed as lacking in terms of renewing a contract. Should there not be some guidance in how to measure this? Checklists in addition to stated criteria in §18-4-6 have to relate to goals. How evaluation forms fits in?</p> <p>The last sentence sounds as if the general statement about the evaluation process is more important than the rating.</p> <p>6.1.6 No comments</p>	<p>N-O</p>	
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§126-143-7. Optional Process Criteria.		
10/21/03	Robert Harris/Wood County BOE	<p>7.1. "...<u>may</u> include these features: Make may, and will and change features to something else.</p> <p>7.1.1 Why are these optional? In §18-4-6, is there a priority given to these criteria over others?</p> <p>7.1.2 Rewrite to make more sense. Too long of a sentence.</p> <p>7.1.3 The Superintendent should be made aware of or have approval over any input from citizens, employees, etc. who inform the county board in its evaluation. The Superintendent cannot stop this from happening, but we should be open and honest when it occurs.</p>
		See 8.1 Restructured
		N-O A/+ N-O
§126-143-8. Catalog of Evaluation Instruments.		
10/21/03	Robert Harris/Wood County BOE	<p>8.1 Please don't specify an organization/association as being the only one responsible for the catalog. Make the State Supt. Responsible to provide for it through cooperative efforts with other agencies along with State Board approval, then he can decide and specify. This is giving a great deal of accountability to a group you don't oversee.</p>
		Required by 18-4-6
		NA-O
§126-143-9. Use of Evaluation Results		

10/21/03	Robert Harris/Wood County BOE	Can a Board of Education just vote to post the Superintendent's position at any time? Where in the law does it say specifically that a Board has to use the evaluation results before they vote to post the position. §18-4-6 says evaluate annually and may use the evaluation results. An evaluation in March 2003 is good until March 2004? The Board could vote to not renew his contract in Feb. 2004.	N-O
§126-143-10. Evaluation Training			
10/21/03	Robert Harris/Wood County BOE	10.1 Please remove the names of specific organizations as responsible or accountable for the training that is provided. Again, give the State Superintendent the accountability for the training program and allow him to develop a cooperative plan for the training with agencies across the state. This is giving power to an organization by name. A wrong Executive Director could create a problem	NA-O
§126-143-11 Severability			
10/21/03	Robert Harris/Wood County BOE	11.1 Does this take care of my concern over mentioning organizations by name.	N-O



West Virginia School Boards Association

WVSBA

PO Box 1008 • Charleston, West Virginia 25324 • (304) 346-0571 • WV 1-800-642-9233

October 22, 2003

10-

Mr. Tony Smedley, Executive Director
Office of Human Resources
W. Va. Department of Education
1900 Kanawha Boulevard East
Building 6, Room 262
Charleston, WV 25305-0330

Dear Mr. Smedley:

The following comments are provided by the W. Va. School Board Association in regard to proposed state Board of Education Policy § 5309 (County Superintendent Performance Evaluations).

The comments were derived from a mailing made to all county boards of education members and county schools superintendents on October 1, 2003. **The purpose of the mailing was to solicit comments from our members and superintendents for forwarding to your office.**

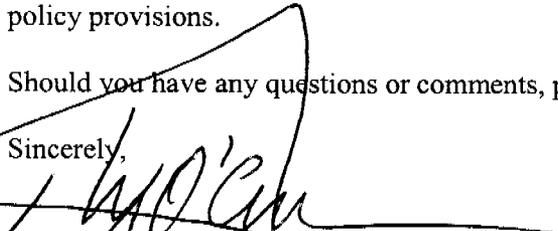
Our offices received these comments:

1. As a general comment, a county superintendent said he preferred "an annotated evaluation rather than (board members' aggregated) ratings." He adds, "At any rate, I would like the assurance that the board evaluation be as 'one.' This is how the board conducts all other business, and it should be no different in the superintendent's evaluation."
2. In re: §126-143-4. Process for the School Year 2004-2005. As developed by the Senate Bill 522 Implementation Committee, which was convened by WVSBA following the Legislature's enactment of this legislation, the intent of this section was to allow county boards, prior to the policy being effective, to use existing county superintendent evaluation forms, or forms that may be available from the W. Va. School Boards Association and other sources. If this process is followed, the heading should read, "Process for School Year 2003-2004." Also, a change should be made in 4.2. for purposes of parallel. Dr. Stewart is forwarding a letter to counties saying, for FY04, existing superintendent evaluation forms may be used.

By carefully reading the statute(s) pertinent to superintendent performance evaluation, you will discover that the SB522 Implementation Committee largely followed the statute in determining policy provisions.

Should you have any questions or comments, please contact me.

Sincerely,


Howard M. O'Cull, Ed.D.,
WVSBA Executive Director

POLICY 5309: COUNTY SUPERINTENDENT PERFORMANCE EVALUATIONS

COMMENT PERIOD ENDS: October 24, 2003

Directions: Please use this form to provide comments/suggestions regarding revised Policy 5309.

Individual/Organization: Gary L. Adkins - Wayne County Board of Education

Title: Superintendent Business: Education

Street Address: 212 North Court Street - P.O. Box 70

City/State/Zip: Wayne, WV 25570

COMMENTS/SUGGESTIONS	
§126-143-1. General.	<p>What happened to SATISFACTORY OR UNSATISFACTORY as discussed at the Superintendent's Conference held in June at Glade Springs????</p> <p style="text-align: right;"><i>Gary L. Adkins</i></p>
§126-143-2. Purpose.	

§126-143-7. Optional Process Criteria

§126-143-8. Catalog of Evaluation Instruments.

§126-143-9. Use of Evaluation Results.

§126-143-10. Evaluation Training.

10-21-03

**POLICY 5309: COUNTY SUPERINTENDENT PERFORMANCE
EVALUATIONS**

COMMENT PERIOD ENDS: October 24, 2003

Directions: Please use this form to provide comments/suggestions regarding revised Policy 5309.

Individual/Organization:

Robert K. Harris

Title: Assistant Superintendent

Business: Wood County Schools

Street Address: 1210 Thirteenth Street Parkersburg, WV 26101

City/State/Zip: Parkersburg, WV 26101

COMMENTS/SUGGESTIONS

§126-143-1. General.

1.1 This rule also provides the process as well as the approval of the process.

Other: When will new policy to accompany §18-5-1c Organization of Board – evaluation be put out for comment?

§126-143-2. Purpose.

None

§126-143-3. Authorization Required.

3.2 Isn't this redundant? A negative of 3.1

3.4 Remove "to do so" from last sentence.

§126-143-4. Processes for School Year 2004-2005.

Is this date right? Should it not be 2003-2004?

4.1 Make the paragraph two sentences instead of one:

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5.5 Rewrite – two many phrases

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7.1.3 The Superintendent should be made aware of or have approval over any input from citizens, employees, etc. who inform the county board in its evaluation. The Superintendent cannot stop this from happening, but we should be open and honest when it occurs.

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8.1 Please don't specify an organization/association as being the only one responsible for the catalog. Make the State Supt. responsible to provide for it through cooperative efforts with other agencies along with State Board approval, then he can decide and specify. This is giving a great deal of accountability to a group you don't oversee.

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Can a Board of Education just vote to post the Superintendent's position at any time? Where in the law does it say specifically that a Board has to use the evaluation results before they vote to post the position. §18-4-6 says evaluate annually and may use the evaluation results. An evaluation in March 2003 is good until March 2004? The Board could vote to not renew his contract in Feb. 2004.

§126-143-10. Evaluation Training.

10.1 Please remove the names of specific organizations as responsible or accountable for the training that is provided. Again, give the State Superintendent the accountability for the training program and allow him to develop a cooperative plan for the training with

agencies across the state. This is giving power to an organization by name. A wrong Executive Director could create a problem.

Policy 5309

Page 4

§126-143-11. Severability.

11.1 Does this take care of my concern over mentioning organizations by name.

Please Mail the Completed Comment Sheet to:

Tony Smedley, Executive Director

Office of Human Resources

West Virginia Department of Education

1900 Kanawha Boulevard East

Building 6, Room 262

Charleston, West Virginia 25305-0330

E-Mail Address: tsmedley@access.k12.wv.us

Fax No.: (304) 558-0048

Telephone No.: (304) 558-3401